IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 223 229

WARREN H. PILLSBURY, Deputy Commissioner for The Thirteenth Compensation District, Under The Longshoremen's and Harbor Workers' Compensation Act, *Petitioner,*

vs.

UNITED ENGINEERING COMPANY, a Corporation, and FIREMAN'S FUND INSURANCE COMPANY, a Corporation, *Respondents.*

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UNITED ENGINEERING COMPANY, a Corporation, and FIREMAN'S FUND INSURANCE COMPANY, a Corporation, *Respondents.*

BRIEF FOR RESPONDENTS IN OPPOSITION.

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BRIEF FOR RESPONDENTS IN OPPOSITION.

OPINIONS BELOW.

The opinion of the United States District Court for the Northern District of California, Southern Division (JR. 15; CR. 15; SR. 14; MR. 15)[1] is reported at 93 F. Supp. 898. The opinion of the United States Court of Appeals for the Ninth Circuit (JR. 44; CR. 70; SR. 42; MR. 56) is reported at 187 F. (2d) 987.[2]

JURISDICTION.

The judgments of the Court of Appeals were entered on March 14, 1951. (JR. 48; CR. 74; SR. 46; MR. 60). By order of Mr. Justice Black dated June 7, 1951, the time for applying for certiorari was extended to and including August 11, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTION PRESENTED.

Whether the one-year period of limitation upon the filing of claims for compensation, as clearly defined by Section 13(a) of the Longshoremen's and Harbor Workers' Compensation Act, can properly

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[1]We shall employ the same designations for the records as those adopted by petitioners, namely, JR., CR., SR. and MR. (See footnote 2 of Petition.)

[2]Because of the existence of a question of law common to each of the four cases, they were consolidated both for trial and on appeal, and all four cases were dealt with in single opinions both in the District Court and the Court of Appeals.

be interpreted by judicial decree to mean that it shall commence from the date disability results rather than from the date of injury.

STATUTE INVOLVED.

The pertinent provisions of the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424, 33 U.S.C. 901 et seq., are set out in the Appendix A.

The material provisions of Section 13(a) of said Act, 33 U.S.C. 913(a), are as follows:

> "The right to compensation for disability under this Act shall be barred unless a claim therefor is filed within one year after the injury * * * except that if payment of compensation has been made without an award on account of such injury * * * a claim may be filed within one year after the date of the last payment * * *".

STATEMENT OF THE CASE.

We shall refer briefly to certain material facts in each of the consolidated cases which were not included in petitioners' statement of the case.

The Johnson case (No. 12,644 below).

Claimant Johnson who was injured on May 28, 1947, filed a claim on January 17, 1948. No compensation was paid. At the hearing held before appellant Deputy Commissioner he testified that on March

15, 1948 he suffered a reduction in pay by reason of having been "lowered from leaderman to welder" at which time claimant "was told by Dr. Dixon and Dr. Holcomb, both, not to use a heavy * * *". (JR. 28.) It was after that, namely, May 15, 1948, that a change occurred in ownership of the employing firm, at which time claimant was assigned to work on boats which he could not do, and as a result was laid off. (JR. 29.) Medical reports introduced in evidence (JR. 33-35) indicate claimant had suffered considerable and continuing injury to his neck and that claimant's condition was such that he was unable to sleep, that he had pain extending from the base of his neck into his head and into the top of the left shoulder, and that his occupation of welding above his head increased and aggravated the discomfort.

The Curnutt case (No. 12,645 below).

Claimant Curnutt, who was injured on February 14, 1947, filed a claim on January 17, 1949. No compensation was paid. Medical reports introduced in evidence at the hearing indicate that Curnutt received a severe injury to his back which caused him pain and discomfort at all times. On the day of the accident he had just one hour to go before the job was finished, but the following day his pain was so severe that he was unable to work and he reported for medical treatment at intervals of twice a week for a period of two months. He was off for a period of about five days at that time, and after he returned to work he continued to notice a considerable amount of pain and discomfort in his back and was told by

the doctor that he "must not do heavy work". (CR. 34.) He was fitted with a low back support. (CR. 54.) He also testified at the hearing that in January, 1948 (within 1 year of the date of injury), his back was bothering him so much that he took off two weeks from his work. (CR. 34-35.)

The Shallat case (No. 12,646 below).

Claimant Shallat, who was injured on November 21, 1947, filed a claim on May 23, 1949. No temporary disability was incurred and no compensation was paid. (SR. 25.) At the hearing before petitioner Pillsbury claimant testified that "the left hand is still the same as it was when I got injured", and that he was suffering "terrific pains when I lift something. It goes right through me. It affects the whole hand, and lots of times I have to drop something. I cannot hold it with the left hand." (SR 27.)

The Manos case (No. 12,647 below).

Claimant Manos, who was injured on December 22, 1947, filed a claim on August 17, 1949. No compensation was paid. As found by the Deputy Commissioner, Manos received a definite and painful injury to his neck and head when he was struck on the head by an iron bar or saddle falling from above. Immediately after the accident, claimant was examined and X-rayed, and was given treatment right along by Dr. Stehr to whom he reported approximately every two weeks up to the date of the hearing. (MR. 27.) He was advised by the doctor not to do any welding but to try to get an easy job, and not to get up on

heights. His boss accommodated him in this type of work so he stayed on the job for a couple of months, at which time the whole yard was laid off. He then lost a week's time, and went to work for another employer. (MR. 28.) He got a job as a welder, which gave him a higher scale of pay than he was getting at the time of his accident. He worked for the second employer for about a year, but still made visits to Dr. Stehr on an average of once a week. (MR. 29.) Claimant continued to have the same symptoms as he experienced immediately following the accident, namely, that his neck "just clicks like crushing ice in there all the time, every move. It just crunches". That at first he noticed "just clicks" and that it then started developing more and more until at the time of the hearing there was a "real tight feeling as she comes as far as I can turn it to the right or left". (MR. 30.) When asked at the hearing when he first developed that condition, claimant testified "Right along, but just come not right at first, but since it started it continued getting worse and strong." (MR. 31.) The first time he reported to his employer to inquire about compensation was August 17, 1949, 1 year and 8 months after the injury. (MR. 32.)

The claimants in each of the cases suffered definite, specific injuries of which they were immediately aware and which caused immediate and continuing symptoms, and for which they sought and obtained immediate medical aid and all but claimant Shallat continued to receive medical treatment up to the time of the filing of their respective claims for compensa-

tion. Each claimant suffered disability in the sense that he was required to be under medical treatment.[3]

ARGUMENT.

I.

SECTION 13(a) OF THE LONGSHOREMEN'S AND HARBOR WORKERS' ACT BARS CLAIMS FOR COMPENSATION UNLESS FILED WITHIN ONE YEAR AFTER THE INJURY, AND IN THE CASES OF SPECIFIC KNOWN INJURIES THE PERIOD CANNOT BE EXTENDED.

The Longshoremen's and Harbor Workers' Compensation Act, Section 13(a), provides for a period of limitations within which claims for compensation can be filed. As heretofore pointed out, the significant portion of this section (33 U.S.C.A. 913 (a)) provides as follows: "The right to compensation for disability under this Act shall be barred unless a claim therefor is filed within one year after the injury * * *". In petitioners' brief the word "injury" is emphasized and this Court is urged to approve the unfounded proposition that inasmuch as the congressional bill enacting this law originally used the word "accident" instead of "injury", the substitution of the latter term indicates that Congress intended that the time for filing a claim should begin to run from the date of "compensable injury", that is, where the injury results in disability beyond seven days. There

[3]Note that in none of the cases was there a so-called "latent" injury or condition. Each claimant suffered a definite painful injury which required continuous medical treatment. There was no recurrent or newly developed condition.

is no basis in fact or reason for the claim that Congress had any such alleged intention. It is clearly apparent that the word "injury" instead of "accident" was used because "injury" is a much broader term in the sense that many conditions may arise from injury which could not conceivably be the basis for a claim under the term "accident". This becomes at once obvious when reference is made to Section 2 of the Act (33 U.S.C.A. 902) which has to do with 'definitions". Under subsection (2) thereof the term "injury" is defined as follows: "The term 'injury' means accidental injury or death arising out of and in the course of employment, *and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.*" (Emphasis added.) The foregoing definition demonstrates why the word "injury" was used in Section 13(a) instead of "accident", for the term "accident" would not include "occupational disease or infection as arises naturally out of such employment", nor would it include "injury caused by the willful act of a third person".

The reasons asserted in petitioners' brief for the substitution of the word "injury" for "accident" in Section 13(a) of the Act cannot therefore be taken seriously. That being so, the related argument that injury means "compensable injury" (disability beyond seven days) must also fall. True, some of the

cases cited by petitioners go off on the ground that "compensable injury" was meant instead of "injury." It is hardly necessary to point out that had Congress intended to specify "injury" in that sense for the purpose of applying the statute of limitations it would have been a simple matter to have so designated the term, as has been done by some state legislative bodies in regard to state compensation acts.

It will be demonstrated below that the Court of Appeals for the Ninth Circuit has considered most carefully the very section involved, namely, 13(a) of the Longshoremen's and Harbor Workers' Compensation Act, and has held without equivocation that the language therein used is clear and unambiguous, and that in providing that a claim is barred unless filed within one year after the injury or within one year after the date of last payment of compensation, that the section means exactly what it says. This Court affirmed the lower court's opinion and denied a petition for rehearing.[4]

II.

IF ANY PROVISION OF THE LONGSHOREMEN'S ACT REQUIRES MODIFICATION, THIS CAN BE DONE ONLY THROUGH LEGISLATIVE AMENDMENT AND NOT BY JUDICIAL DECREE.

Many of the state compensation statutes, in addition to limitations of time for filing *original* claims,

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[4] *Kobilkin v. Pillsbury*, 103 F. (2d) 667, affirmed, U.S. Supreme Court, 309 U.S. 619, rehearing denied, 309 U.S. 695.

provide specifically for the filing of claims for so-called "new and further disability". For example, California Labor Code Section 5405 provides that proceedings may be commenced for the collection of compensation benefits within one year from the date of injury or expiration of period covered by any payment of compensation, or the date of last furnishing of medical treatment.

In addition to these periods of limitation for the filing of original claims within the one year period, the California law prescribes a *five-year* period within which claims for "new and further disability" may be brought. See also Labor Code Section 5410, which reads as follows: "Nothing in this chapter shall bar the right of any injured employee to institute proceedings for the collection of compensation within five years after the date of the injury upon the ground that the original injury has caused new and further disability[5] * * *".

The foregoing demonstrates the obvious fact that for the situations in which "new and further disa-

[5]Section 22 of the Longshoremen's Act, 33 U.S.C.A. 922, provides for modification of awards as follows:

"Upon his own initiative, or upon the application of any party in interest, on the ground of a change in conditions or because of a mistake in a determination of fact by the deputy commissioner, the deputy commissioner may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim, review a compensation case in accordance with the procedure prescribed in respect of claims in section 919, and in accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. * * *."

bility" may arise at some later time after the original injury, provision can and has been made by *legislation*, not by "judicial amendment". If the Longshoremen's Act is inadequate in this respect it is surely not for the Courts to attempt to correct such omissions; only Congress can adopt new legislation or enact necessary amendments to the existing law.

III.

THE AUTHORITIES RELIED UPON BY PETITIONERS ARE CONCERNED WITH SO-CALLED LATENT INJURIES, WHEREAS THE PRESENT CASES INVOLVE SPECIFIC AND DEFINITE INJURIES OF WHICH THE CLAIMANTS WERE AT ALL TIMES FULLY AWARE.

The case of *Di Giorgio Fruit Corp. v. Norton*, 93 F. (2d) 119, certiorari denied, 302 U.S. 767 (cited by petitioners), involved a *latent* condition following an injury as the result of which the claimant suffered contusions and lacerations to the globe of his left eye when he was struck by a bunch of bananas. He was disabled for about one week and thereafter resumed his employment for approximately ten months, following which he was confined to prison for some eighteen months. During his confinement he felt symptoms in his eye and was treated by the prison authorities. After his release from prison he obtained further treatments and in August, 1936, approximately four years after the injury, he filed a claim under the Longshoremen's Act for compensation for permanent disability resulting from the loss of the sight of his eye. In the course of the hearings

before the Deputy Commissioner, claimant testified that the first time he noticed "anything serious the matter" with his eye was just a few weeks after the hearing. It was found that the injury to claimant's eye "was by its nature a progressive one" resulting from the injury and proceeding through various progressive stages of degeneration, culminating in a cataractous condition, and that the claimant "*became aware of this condition* in the month of August, 1936," four years after the injury, whereupon he immediately filed his claim. (Emphasis added.)

It is important to note the comments of the Court of Appeals in the *Di Giorgio* case, at page 120, as to whether the claimant's condition "should have been observable" by him "long prior to the time of the filing of his claim": The Court pointed out that one of the physicians testified that the condition might not have been observed by the claimant until August 1936. This discussion obviously concerns the question of whether the claimant was *unaware of his condition* and therefore excused from filing his claim within the prescribed one year period. The Court seemed to excuse a delay in the filing of the claim until the condition was "reasonably apparent."

The cases at bar of course are quite dissimilar, and each claimant here was under medical care and fully aware of his injury and continuing painful symptoms. We respectfully submit that if the holding of the Court of Appeals in the *Di Giorgio* case ever was good law it has been overruled by this Court in the

case of *Kobilkin v. Pittsbury,* 103 F.(2d) 667, affirmed, U.S. Supreme Court, 309 U.S. 619, rehearing denied, 309 U.S. 695. (This opinion will be discussed fully below.)

Another case relied upon by petitioners is *Potomac Electric Power Co. v. Cardillo,* 107 F. (2d) 962. The claimant in that case was struck on the head by the metal end of an air hose. He was treated for a laceration and concussion in the emergency hospital for two days, and then returned to work without any further treatment or disability and continued working for approximately one and one-half years, from which time on he worked very little. About two years following his injury a psychiatrist informed claimant "that he was suffering from a progressive disease of the brain" caused by the said injury. Three months thereafter he filed a claim for compensation. The U.S. Court of Appeals for the District of Columbia held that the statute of limitation did not bar the claim, citing *Kropp v. Parker,* 8F Supp. 290, and the *Di Giorgio* case, supra. Here again, the *Kobilkin* case is controlling, and in any event, the facts differ from the present claims in that the claimant in the *Potomac* case, except for the two days following his injury, had no medical treatment. Furthermore, there were apparently no symptoms and the claimant was unaware of any condition resulting from the injury until approximately two years thereafter when he was examined and found to be suffering from "a progressive disease of the brain", following which he immediately filed a claim.

It is not true as claimed at page 10 of petitioner's brief that "The conflict of decisions among the circuits thus presented was left unresolved by this Court's later affirmance, without opinion and by an equally divided Court, of the *Kobilkin* decision". As we have pointed out, the cases which petitioners urge as authority for their tenuous position are based on *latent* conditions where the injured employees were not aware of the serious injuries and conditions suffered until some time after the statutory period. In the cases at bar, each of the claimants sustained specific injuries and each of them was under medical treatment and suffered painful symptoms from the date of their injuries up to the date of the filing of their respective claims.

One other decision is urged by petitioners, namely, *Great American Indemnity Co. v. Britton*, 179 F. (2d) 60, decided by the United States Court of Appeals for the District of Columbia Circuit, which it is claimed is in conflict with the holdings in the present cases. The situation is quite distinguishable. In the *Great American Indemnity* case a carpenter suffered an injury to his leg, the condition of which was erroneously diagnosed by a doctor as being "an illness (a thrombosis) in the leg rather than from an accidental injury". The injury occurred on March 11, 1946, but it was not until April 4, 1947, more than one year after the accident, when claimant was examined by an orthopedic specialist who found that the achilles tendon had been torn through its major part and that an operation was required. A formal

claim for compensation was filed on May 16, 1947. In holding that the claim was timely filed, the Court referred to the *Potomac Electra case*, supra, and held that since the claimant had been given improper medical advice to the effect that his condition was non-industrial he could not, "in good conscience" have filed a claim. The Court went on to say that

> "Ignorance based on completely erroneous advice from a physician can be even more profound—and more dangerous in its consequences—than ignorance based on no advice at all. Such advice effectively prevents a conscientious employee, or a lawyer regardful of the standards of his profession, from filing a claim for an award, at least until different advice of equal or higher standing is received. We cannot place a premium on the filing of claims which fly in the face of professional advice and ethical standards. There is no suggestion here that claimant acted negligently or in bad faith. In no sense is this case one involving mere delay and laxness in the filing of a claim." 179 F. (2d) 60, 62.

It is of great significance to note that the Court in the *Great American Indemnity* case declared (p. 62) as follows:

> "To be distinguished also is the situation in *Kobilkin v. Pillsbury*, 9 Cir., 103 F.(2d) 667, affirmed by an equally divided court, without opinion, 309 U.S. 619, 60 S.Ct. 465, 84 L.Ed. 983. The court there sustained the finding of the deputy commissioner that a claim, filed after one year had elapsed from the date when the injuries occurred, was not timely. *In that case, not only*

was the injury patent, but the employee at all times realized the causal connection between the accident and his subsequent suffering, the only unknown factors being the extent of the injury and the likelihood of recurrent suffering. No element of erroneous medical advice was present". (Emphasis supplied.)

It can hardly be said, therefore, that the *Kobilkin* case or the cases at bar are in conflict with the holding of the Court of Appeals in *Great American Indemnity v. Britton*, supra, which is a situation where the injured employee was not aware of the industrial character of his condition. In the *Kobilkin* case and in the cases at bar, the injured employees were fully aware of their injuries, were under medical care and suffered continuing painful symptoms.

The arguments urged in the present petition are based upon the same reasons urged heretofore, and which were considered and rejected by this Court on petition for certiorari and petition for rehearing in the *Kobilkin* case. This Court has already considered and decided the question here presented, which is no more "of substantial importance" now, than heretofore.

We respectfully submit that it is not true as claimed in Petitioners' Brief (pp. 10, 11) that "In holding that the period of limitations begins from the time of the accident instead of from the time the injury becomes compensable, the Court below held, in effect, that it begins to run before the cause of action accrues." For one thing, if an injured employee con-

tinues to suffer pain and discomfort for as long as a year from the date of his injury, his condition may well be *permanent*. In such case, he is put on notice by his prolonged and painful condition and he is authorized under the Act to file his claim for compensation. Section 19(a)(33 USCA 919(a)) by providing that "a claim for compensation may be filed at any time after the first seven days of disability following any injury * * *" does not prohibit a claimant from filing a claim until there has first been a period of seven days of temporary disability. There are many cases where the injuries do not cause temporary disability, but this has never resulted in barring the filing of claims for permanent disability.

One of the very claims before this Court, namely, that of Claimant Shallat is just such a case. To follow petitioners' argument to its logical conclusion, Shallat cannot maintain a claim because he has never incurred "the first seven days of disability".

As a matter of fact petitioners herein have long followed a practice of initiating and permitting the filing of claims by injured employees expressly to prevent the running of the statute of limitations. See Appendix B.

Indeed, Section 19(a) (33 USCA 919(a)) does not *prohibit* the filing of a claim until "after the first seven days of disability following injury". The Section merely says that "A claim for compensation *may* be filed * * * at any time after the first seven days of disability following any injury". As pointed

out, if this section were prohibitive against the filing of any claim unless there was first a period of seven days of disability, claimant Shallat and many other claimants in his position would never be able to file a claim. Such an absurd result was never intended by Congress.

The reference in the statute to the filing of a claim "any time after the first seven days of disability following any injury" obviously is in keeping with Section 6 (33 USCA 906) which provides that "no compensation may be allowed for first seven days of disability." In other words, since compensation for *temporary* disability could not possibly be awarded where injury causes temporary disability for seven days or less, there would be no basis for a claimant to perform the idle act of filing a claim for temporary disability in such case. However, if for example, the claimant were in need of medical treatment which the employer refused to furnish, even though no period of temporary disability were involved, the employee would still be entitled to file a claim for medical benefits. It is therefor abundantly clear that Section 19(a) (33 USCA 919(a)) was never intended to deny the right to file a claim excepting in those cases of disability in excess of seven days.

As we have said, the reasoning of the authorities relied upon by petitioners was based in each case upon special situations involving *latent* injuries and conditions. No such situation prevails in any of the cases at bar.

IV.

THE BACKGROUND, THEORY, AND PURPOSES OF STATUTES OF LIMITATION REQUIRE THE COURTS TO LOOK WITH FAVOR UPON SUCH STATUTES, AND TO CONSTRUE THE LIMITATION LIBERALLY SO AS TO EFFECT THE INTENTION OF CONGRESS.

To adopt the contentions of petitioners would literally mean that there would be no statute of limitations whatsoever in any case where temporary disability did not extend beyond seven days, whereas in a case of injuries involving a disability period and payment of compensation beyond the waiting period, the claim would be barred by the one year statutory period.

A study of the origin and development of statutes of limitation indicates that while in the early development of this phase of the law such a defense was unpopular and was often circumvented by the courts, the wisdom and need for legislations of this nature is now fully acknowledged. We refer to the following significant commentary from 34 Am. Jur. 24:

> "This hostility of the courts toward the limitation statutes seems to have been transplanted to this country as a part of the common law. In time, however, the legislative policy came to be recognized as controlling, and the duty of the Courts to give effect thereto to be fully recognized. The modern tendency is, although there are some cases which contain statements to the contrary, to look with favor upon the defense. Statutes of limitation are now considered as wise and beneficent in their purpose and tendency;

they are looked upon as statutes of repose, and are held to be rules of property vital to the welfare of society. Such statutes are deemed to be in the interest of morals, serving to prevent perjuries, frauds, and mistakes, and to render people attentive to the early adjustment of demands, and prevent the disturbance of settlements which have been made but of which the proof may have been lost. While the courts will not strain either the facts or the law in aid of a statute of limitations, nevertheless it is established that *such enactments will receive a liberal construction in furtherance of their manifest object, are entitled to the same respect as other statutes, and ought not to be explained away.*" (Emphasis added.)

See also *Fontana Land Co. v. Laughlin*, 199 Cal. 625 at page 636, wherein the Supreme Court of California held

"The power to nullify acts of the legislature prescribing a limitation upon the time within which actions may be commenced is not a judicial prerogative. Statutes of limitation have become rules of property. They are vital to the welfare of society and are favored by the law."

Again, in 34 Am. Jur. 41, it is stated that

"the courts are inclined to construe limitation laws liberally, so as to effect the intention of the legislature. Such statutes will be given the same effect as other enactments, and unless compelled to do so by the force of former decisions, *the courts will not give a strained construction in order to evade their effect.*" (Emphasis added.)

What petitioners are asking this Court to do is to read into the statute some exception not provided for in the law. As stated in 34 *Am. Jur.* 44:

> "In view of the favorable light in which statutes of limitation are now regarded, their application usually may not be evaded by implied exceptions, or by the interpolation of new provisions. As a general rule, the enumeration by the legislature of specific exceptions by implication excludes all others, and * * * the courts ordinarily are without power to read into statutes, by construction, exceptions which have not been embodied therein."

We call the Court's attention specifically to the following statement contained in 34 *Am. Jur.* 151:

> "It has been held that the courts in construing a special statute of limitation will not read another statute into it and thus incorporate exceptions not contained therein, or give it any new or unusual interpretation."

There could never be an end to litigation arising out of claims filed under the Longshoremen's Act if petitioners' contentions were to be adopted. There would be no time limit on when a claimant could revive an old, stale claim. Were the practice to become widespread, which in all likelihood would be the case, the offices of the various Deputy Commissioners would be called upon to hold hearings on large numbers of stale and unmeritorious claims, with the effect that the very thing petitioners complain about, namely, being deluged with more claims than they could handle, would surely be the result. It

would not be possible to close any claim, and the statute of limitations would become nonexistent, a situation which would plainly defeat the clearly expressed intentions of Congress.

Even the most liberal state workmen's compensation acts do not impose upon an employer unlimited liabilities forever.

V.

THE KOBILKIN CASE HOLDING THAT "ONE YEAR AFTER THE INJURY" MEANS EXACTLY THAT IS CONTROLLING.

In 1939 this Honorable Court had occasion to consider the proper interpretation to be given to Section 13(a) of the Longshoremen's Act in the case of *Kobilkin v. Pillsbury*, 103 F. (2d) 667, affirmed, U. S. Supreme Court, 309 U.S. 619, rehearing denied, 309 U.S. 695. Petitioners attempt to distinguish this case, but we believe a careful analysis of the lower Court's opinion and discussion of the meaning of this Section of the Act will demonstrate beyond doubt that the language employed by Congress means just what it says.

The claimant in the *Kobilkin* case was injured on June 7, 1935 when he was struck on the left shoulder by a sack of sugar which had dropped from a sling load. It was found that he had sustained a bad bruise from which he was disabled for three weeks following the accident, during which time compensation was voluntarily paid to him. He continued to experience physical pain but suffered no further loss of wages

on account of the injury until January 9, 1937, on which date he became aware of severe pain in his shoulder and went to a doctor of his own choice who operated on his shoulder for excision of a sub-deltoid bursa. It was found at the operation that there was a separation of the bones of the shoulder. On March 3, 1937 a claim for compensation was filed. The Deputy Commissioner denied the claim on the ground that it had been filed more than one year from the date of last payment of compensation, and was therefore barred. The Court of Appeals analyzed the provisions of Section 13(a) of the Longshoremen's Act, 33 U.S.C.A. 913(a), and considered carefully not only the portion of the section dealing with claims barred because not filed within "one year after the date of last payment" of compensation, but also the provision in the section that the right to compensation "shall be barred unless a claim therefor is filed within one year after the injury". In that regard the law was declared to be as follows (103 F. (2d) 667, at 670):

> "The terms 'injury' and 'disability', separately defined in the statute, are not synonymous. It has not been suggested that the injury from which appellant suffers is an occupational disease. Admittedly, it is an accidental injury arising in the course of employment. It was inflicted at the time of the accident, not when its full extent was first noted at the later time. The trauma in fact resulted in an immediate though temporary disability for which appellant was paid compensation. The circumstance that appellant again became disabled a year and a half

> later, and the more serious nature of the injury was then for the first time recognized, does not change the situation. The claim was not filed until more than a year after the occurrence of the injury and more than a year after the last payment of compensation. Under the plain terms of Section 13(a) of the statute the claim is barred. If we turn to Section 22 and assume a change of condition we again encounter the statutory bar."

It is manifestly clear from the foregoing language that Court of Appeals recognized and considered the importance of the fact that the terms "injury" and "disability" are separately defined by the Act.[8] Petitioners' argument that the word "injury" in Section 13(a) should be construed to mean "compensable injury" is contrary to the separate definitions for "injury" and "disability". Nor is there any rational basis for the argument made by petitioners in the court below that "injury" as used in the section under consideration means the date when a claimant "knows or has reason to know of the existence of his physical disability and its relation to the employment", or that "the time for filing claim does not begin to run until this awareness exists". (Page 33, Petitioners' Brief in court below.)

---

[8] "The term 'injury' means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment." Sec. 2 (2). "'Disability' means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." Sec. 2(10). (13 U.S.C.A. 902 (2), (10).)

In this respect we refer to the declaration of the Court of Appeals in the *Kobilkin* case (103 F. (2d) at 670) as follows:

> "Admittedly, it is an accidental injury arising in the course of employment. *It was inflicted at the time of the accident, not when its full extent was first noted at the later time.*" (Emphasis added.)

We repeat, the same argument now made by petitioners in urging that Section 13(a) should have an interpretation ~~different from~~ the actual and clear wording thereof was indeed considered and rejected by this Court in affirming the lower court's pronouncement in the *Kobilkin* case (103 F. (2d) at 670) as follows:

> "It was the manifest Congressional intent to deny compensation in all cases of disability arising ~~from accidental injury~~ unless claim is filed within the time limited. *No provision is made for exceptional cases. We agree that the act is to be liberally construed, but neither the deputy commisisoner nor the courts have the power to legislate; and nothing short of legislation would make relief possible in a case like this.* (Emphasis added.)

It is of utmost significance that Judge Mathews in a concurring opinion (103 F. (2d) at 671) declared emphatically that:

> "As used in the Longshoremen's and Harbor Workers' Compensation Act (Section 13), the phrase 'one year after the injury' means just that. It does not mean one year after the claim-

ant's discovery of the true nature of the injury. The Act says nothing about discovery."

Judge Mathews' discussion was not confined to claims where compensation had been paid but also to claims where none had been paid. He stated very clearly that

> *"the phrase 'one year after the injury' means just that. It does not mean one year after the claimant's discovery of the true nature of the injury."* (Emphasis added.)

A fair and accurate statement of the law, therefore, is, that where a specific trauma occurs, as distinguished from occupational disease, the *injury* is "inflicted at the time of the accident, not when its full extent" is first noted at some later time, and that the phrase in Section 13(a), "one year after the injury", means just that and it does not mean five or ten years, or an unlimited number of years, after the injury, as urged. The sheer absurdity of the position taken by petitioners is exemplified when it is broken down into the following categories:

(a) An injured workman who has suffered 8 days of disability and has received compensation for 1 day is barred from recovery of further compensation unless a claim is filed within one year.

(b) An injured workman who has suffered 7 days of disability and has received no compensation has *forever* within which time to file his claim.

(c) An injured workman (as in the case of Shallat herein) who claims to have incurred a

permanent disability, but has not suffered any temporary disability is barred from filing any claim until and unless he shall first sustain more than seven days of disability.

No such incongruous intention can be seriously imputed to Congress.

This Court's consideration and affirmance of the lower court's holding in the *Kobilikin* case, is the law of the land; consequently none of the cases cited by petitioners can be taken as an adequate basis for the granting of petitioner's application for certiorari. The *Kobilikin* case is controlling.

CONCLUSION.

From the foregoing, it is respectfully submitted that the petition for the writ of certiorari should be denied.

Dated, San Francisco, California,
September 10, 1951.

LYMAN HENRY,
Proctor for Respondents.

JOHN H. BLACK,
EDWARD R. KAY,
Of Counsel for Respondents.

(Appendices A and B Follow.)

Appendices A and B

Appendix A

The relevant provisions of the Longshoremen's and Harbor Workers' Compensation Act (c. 509, 44 Stat. 1424, 33 U. S. C., Secs. 901 *et seq.*) are as follows:

SEC. 2. When used in this Act—

* * * * * * *

(2) The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

* * * * * * *

(10) "Disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.

(11) "Death" as a basis for a right to compensation means only death resulting from an injury.

(12) "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this Act, and includes funeral benefits provided therein.

* * * * * * *

SEC. 3. (a) Compensation shall be payable under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any

dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law.

* * * * * * *

SEC. 4 (b). Compensation shall be payable irrespective of fault as a cause for the injury.

* * * * * * *

SEC. 6. (a) No compensation shall be allowed for the first seven days of the disability, except the benefits provided for in section 7: *Provided, however,* That in case the injury results in disability of more than forty-nine days, the compensation shall be allowed from the date of the disability.

* * * * * * *

SEC. 7. (a) The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for such period as the nature of the injury or the process of recovery may require. * * *

* * * * * * *

SEC. 8. Compensation for disability shall be paid to the employee as follows:

(a) Permanent total disability: In case of total disability adjudged to be permanent 66⅔ per centum of the average weekly wages shall be paid to the employee during the continuance of such total disability. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

(b) Temporary total disability: In case of disability total in character but temporary in quality 66⅔ per centum of the average weekly wages shall be paid to the employee during the continuance thereof.

(c) Permanent partial disability: In case of disability partial in character but permanent in quality, the compensation shall be 66⅔ per centum of the average weekly wages, which shall be in addition to compensation for temporary total disability or temporary partial disability paid in accordance with subdivision (b) or subdivision (e) of this section respectively, and shall be paid to the employee, as follows:

* * * * * * *

(18) Total loss of use: Compensation for permanent total loss of use of a member shall be the same as for loss of the member.

(19) Partial loss or partial loss of use: Compensation for permanent partial loss of use of a member may be for proportionate loss or loss of use of the member.

(20) Disfigurement: The deputy commissioner shall award proper and equitable compensation for serious facial or head disfigurement, not to exceed $3,500.

(21) Other cases: In all other cases in this class of disability the compensation shall be 66⅔ per centum of the difference between his average weekly wages and his wage earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideraton of the degree of such impairment by the deputy commissioner on his own motion or upon application of any party in interest.

(22) In any case in which there shall be a loss of, or loss of use of, more than one member or parts of more than one member set forth in paragraphs (1) to (19) of this subdivision, not amounting to permanent total disability, the award of compensation shall be for the loss of, or loss of use of, each such member or part thereof, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, paragraph (17) of this subdivision shall apply.

* * * * * * *

(e) Temporary partial disability: In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be two-thirds of the difference between the injured employee's average weekly wages before the injury and his wage-earning capacity after the injury in the same or another employment, to be paid during the continuance of such disability, but shall not be paid for a period exceeding five years.

(f) Injury increasing disability: (1) If an employee receive an injury which of itself would only cause permanent partial disability, but which, combined with a previous disability, does in fact cause permanent total disability, the employer shall provide compensation only for the disability caused by the subsequent injury: *Provided, however,* That in addition to compensation for such permanent partial disability, and after the cessation of the payments for the prescribed period of weeks, the employee shall be paid the remainder of the compensation that would be due for permanent total disability. Such additional compensation shall be paid out of the special fund established in section 44 [33 U. S. Code 944].

* * * * * * *

APPENDIX B-1

Form US-208 B
Revised December 10, 1941

United States of America

UNITED STATES EMPLOYEES' COMPENSATION COMMISSION

Rec'd

IN THE MATTER OF THE CLAIM FOR COMPENSATION UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT.

WILLIAM FAZANDE, *Claimant.*

against

MATSON TERMINALS, INC., *Employer.*

FIREMAN'S FUND INSURANCE CO., *Carrier.*

Case No. 716-107
Claim No. 2614
NOTICE OF HEARING
Injury of 5-29-45

(R) To Mr. William Fazande,
1645 Leavenworth St.,
San Francisco, Calif.

(R) To Matson Terminals, Inc.,
Attn: Mr. E. J. Kelly,
To 215 Market St.,
San Francisco, Calif.
To
To

You are hereby notified that upon application made by claimant, an interested party in the above-entitled claim, a hearing on such claim is hereby ordered, to be held before WARREN H. PILLSBURY, Deputy Commissioner 13th Compensation District of the United States Employees' Compensation Commission, at ROOM 318, 417 MARKET STREET, in the City of SAN FRANCISCO, CALIFORNIA, on the MONDAY, the 17th day of JUNE, 1946, at 10 o'clock a. m. of that day.

8B-203, employee's claim for compensation filed to stop the running of the Statute of Limitations.
(SEE ATTACHED LETTER)

In testimony whereof, the undersigned, a Deputy Commissioner of the United States Employees' Compensation Commission, has hereunto set his hand at San Francisco, California, this 5th day of June, 1946

Warren H. Pillsbury
Deputy Commissioner.

13th *Compensation District.*

16-881-1

Case No. 716-409

United States Employees' Compensation Commission.
Office of Deputy Commissioner Warren H. Pillsbury.
Administering Longshoremen's and Harbor Workers' Compensation Act.

June 5, 1946

NOTICE TO EMPLOYER AND INSURANCE CARRIER THAT CLAIM HAS BEEN FILED.

Gentlemen:

There is enclosed copy of a claim for compensation which has been filed by claimant, William Fazande. You should proceed to pay compensation promptly when due as provided by Section 14 of the Longshoremen's and Harbor Workers' Compensation Act, and to furnish medical treatment in accordance with Section 7(a) thereof, unless liability to pay compensation is controverted.

Section 14(d) provides that if the employer controverts the right to compensation he shall file with the deputy commissioner, on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted.

Under the Commission's regulations where claim is filed the employer or insurance carrier, within 10 days from the date notice is received that claim has been filed, is required to file answer thereto.

Answer is enclosed for use in the event the right to compensation is controverted and the claim is to be opposed.

The original notice and answer should be filed with the deputy commissioner at the above address and copy thereof served upon the claimant either personally or by mailing it to the address given in the claim if you deny liability, otherwise you should proceed to pay compensation immediately as provided by the said Act and not require the claimant, as well as yourself, needlessly to incur the expenses incidental to a hearing before the deputy commissioner.

Very truly yours,

WARREN H. PILLSBURY,

Deputy Commissioner.

pr

Case No. 716-409

EMPLOYEE'S CLAIM FOR COMPENSATION.

1. Name of employee: William Fazande.

* * * * * * *

9. Employer: Matson Terminals, Inc.

* * * * * * *

14. Date of accident or first illness, the 29th day of May, 1945.

15. How did accident happen or how was occupational disease caused? Stepped off end of ladder into hatch, and fell, landing on a shovel.

16. State fully nature of injury or occupational disease: Torn muscles and ligaments in chest.

* * * * * * *

Signed by William Fazande,
Claimant.

Form US-208 B
Revised December 31, 1941

APPENDIX B-2

United States of America

FEDERAL SECURITY AGENCY, BUREAU OF EMPLOYEES' COMPENSATION

	J.H.B.	
	E.R.K.	
	H.W.S.	
	J.A.G.	
	R.L.F.	
	R.C.T.	
	M.J.M.	

IN THE MATTER OF THE CLAIM FOR COMPENSATION UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT.

FRED W. HOOPER,
Claimant.

against

MATSON NAVIGATION COMPANY,
Employer.

FIREMAN'S FUND INSURANCE COMPANY,
Carrier.

Case No. 1-3452
Claim No. 3375
NOTICE OF HEARING
Injury of 12-13-48

RECORDED
FEB 27 '50

(R) To Mr. Fred W. Hooper
2521 Van Ness Avenue
San Francisco, California

(R) To Matson Navigation Co.,
215 Market St.,
To San Francisco, California

(R) To Firemen's Fund Insurance Co.,
Attn: Mr. E. R. Kay, Attorney at Law
To 233 Sansome Street
San Francisco, California

You are hereby notified that upon application made by claimant, an interested party in the above-entitled claim, a hearing on such claim is hereby ordered, to be held before WARREN H. PILLSBURY, Deputy Commissioner 13 Compensation District of the Federal Security Agency, Bureau of Employees' Compensation, at ROOM 126, 630 SANSOME STREET, in the City of SAN FRANCISCO, CALIFORNIA, on ~~THE~~ FRIDAY, the 10th day of MARCH, 1950, at 10 o'clock ~~A~~ m. of that day.

US-203, employee's claim for compensation, filed to protect the running of the Statute of Limitations.

SEE ATTACHED LETTER

per

In testimony whereof, the undersigned, a Deputy Commissioner of the Federal Security Agency, Bureau of Employees' Compensation, has hereunto set his hand at San Francisco, California this 24th day of February 1950

Warren H. Pillsbury
Deputy Commissioner.
Compensation District.

1362

16-501-2

Case No. 1-3452

Office of Deputy Commissioner Warren H. Pillsbury.
Administering Longshoremen's and Harbor Workers' Compensation Act.

February 24, 1950

NOTICE TO EMPLOYER AND INSURANCE CARRIER THAT CLAIM HAS BEEN FILED.

Gentlemen:

There is enclosed copy of a claim for compensation which has been filed by claimant, Fred W. Hooper. You should proceed to pay compensation promptly when due as provided by Section 14 of the Longshoremen's and Harbor Workers' Compensation Act, and to furnish medical treatment in accordance with Section 7(a) thereof, unless liability to pay compensation is controverted.

Section 14(d) provides that if the employer controverts the right to compensation he shall file with the deputy commissioner, on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted.

Under the Bureau's regulations where claim is filed the employer or insurance carrier, within 10 days from the date notice is received that claim has been filed, is required to file answer thereto.

Answer is enclosed for use in the event the right to compensation is controverted and the claim is to be opposed.

The original notice and answer should be filed with the deputy commissioner at the above address and copy thereof served upon the claimant either personally or by mailing it to the address given in the claim if you deny liability, otherwise you should proceed to pay compensation immediately as provided by the said Act and not require the claimant, as well as yourself, needlessly to incur the expenses incidental to a hearing before the deputy commissioner.

Very truly yours,
WARREN H. PILLSBURY,
Deputy Commissioner.

Federal Security Agency
Bureau of Employees' Compensation
Warren H. Pillsbury, Deputy Commissioner
Thirteenth District
Room 126, Appraisers Building
630 Sansome Street
San Francisco 11, California

pr

Case No. 1-3452

EMPLOYEE'S CLAIM FOR COMPENSATION.

1. Name of employee: Fred W. Hooper.

* * * * * * *

9. Employer: Matson Navigation Company.

* * * * * * *

14. Date of accident or first illness, the 12th day of December, 1948, at ..... o'clock, A.M.

15. How did accident happen or how was occupational disease caused? Caught right foot in control gear, water tight door, maneuvering platform, engine room.

16. State fully nature of injury or occupational disease: Contusion right foot.

* * * * * * *

Signed by Fred W. Hooper,
Claimant.

Federal Security Agency
Bureau of Employees' Compensation
Longshoremen's and Harbor Workers'
Compensation Act
Thirteenth Compensation District
Room 126, 630 Sansome Street
San Francisco 11, California

Address Replies to:
Refer to File No. .....
The Deputy Commissioner

February 24, 1950

Mr. Fred W. Hooper
2521 Van Ness Avenue
San Francisco,
California

Matson Navigation Co.,
215 Market Street
San Francisco,
California

Fireman's Fund Insurance Co.,
Attn: Mr. E. R. Kay, Attorney at Law
233 Sansome Street
San Francisco,
California

Re: Fred W. Hooper, 1-3452
Matson Navigation Company
Injury of 12-12-48.

Gentlemen:

Please be advised that the hearing in the above case now set for Friday, March 10th, 1950, at 10:00 a.m.,

at Room 126, 630 Sansome Street, San Francisco, California, *has been postponed indefinitely* pending return of injured person to port and surgery as recommended.

Yours very truly,

WARREN H. PILLSBURY

Warren H. Pillsbury
Deputy Commissioner
13th Compensation District

pr

APPENDIX B-3

Form US-224 B
Revised December 22, 1941

United States of America

U. S. DEPARTMENT OF LABOR, BUREAU OF EMPLOYEES' COMPENSATION

	J H B
	E R K
	H W S
	J A G
	R J A
	K C L
	M J M

IN THE MATTER OF THE CLAIM FOR COMPENSATION UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT.

William T. Crawford
Claimant.

against

United Engineering Company
Employer.

Fireman's Fund Ins. Co.
Carrier.

Case No. 1366-1049

PRE-HEARING CONF. OR NOTICE OF HEARING C1-3547

Inj: 9/16/47

To Mr. William T. Crawford, 1153 Divisadero Street, San Francisco, California

TO: United Engineering Company, 215 Market Street, San Francisco, California

To Fireman's Fund Insurance Company, c/o Mr. Gaughran, Attorney, 233 Sansome Street San Francisco, California

To Mr. Henry C. Sanford, Attorneys, 714 Hobart Building, San Francisco 4, Calif.

To

To

You are hereby notified that upon application made by William T. Crawford, an interested party in the above-entitled claim, a hearing on such claim is hereby ordered, to be held before Warren H. Pillsbury

Deputy Commissioner 13th Compensation District of the U. S. Department of Labor, Bureau of Employees' Compensation, at Room 126, 630 Sansome Street in the City of San Francisco, California on ~~the~~ FRIDAY, 30th day of March, 19 51, at 9:00 o'clock A. m. of that day.

This prehearing conference or hearing is set on the initiative of the Deputy Commissioner

PLEASE NOTE: Statute of limitations may run March 30, 1951.

Calendar
Filed
Ace Reporter
Reporter
eep

In testimony whereof, the undersigned, a Deputy Commissioner of the U. S. Department of Labor, Bureau of Employees' Compensation, has hereunto set his hand at San Francisco, California this 21st day of March, 19 51

Deputy Commissioner,
13th
Compensation District.

16-661-6

Case No. 1366-1049

EMPLOYEE'S CLAIM FOR COMPENSATION.

1. Name of employee: Wm. H. T. Crawford.

* * * * * * *

9. Employer: United Engineering Co.

* * * * * * *

14. Date of accident or first illness, the 16th day of Sept., 1947, at 10 o'clock, A. M.

15. How did accident happen or how was occupational disease caused? Fell from main deck into engine room and injured back.

16. State fully nature of injury or occupational disease: Injury to back.

* * * * * * *

Signed by Wm. H. T. Crawford,
Claimant.

APPENDIX B-4

Form US-215 B
Revised December 23, 1941

United States of America

U. S. DEPARTMENT OF LABOR, BUREAU OF EMPLOYEES' COMPENSATION

IN THE MATTER OF THE CLAIM FOR COMPENSATION UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT.

Jess I. Armenta *Claimant.*

against

Arrow Stevedore Company *Employer.*

Fireman's Fund Insurance Company *Carrier.*

Case No. 2201-180

NOTICE OF HEARING Ind. 8/28/50

CI-3650

To Mr. Jess I. Armenta, 235 E. Johnson Street, Compton, California

To Arrow Stevedore Company, North 179, Wilmington, California

To Fireman's Fund Insurance Company, Citizens Bank Building, Attention: Mr. Murray H. Roberts, Attorney, Wilmington, California

To Fireman's Fund Insurance Company, 233 Sansome Street, San Francisco, California

To Mr. Joseph Louis, Vice Pres., ILWU, Local 13, 234 Broad Avenue, Wilmington, California

To

You are hereby notified that upon application made by Jess I. Armenta, an interested party in the above-entitled claim, a hearing on such claim is hereby ordered, to be held before Warren H. Pillsbury

Deputy Commissioner 13th Compensation District of the U. S. Department of Labor, Bureau of Employees' Compensation, at the CONFERENCE ROOM, LONGSHOREMEN'S DISPATCHING in the City of WILMINGTON, CALIFORNIA on the IN TUESDAY, 19th day of SEPTEMBER, 1950, 10:30 o'clock a. m. of that day.

WH-203, US-215, US-215A served on the parties with this notice

See ATTACHED LETTER POSTPONING HEARINGS

Calendar Filed Sep

In testimony whereof, the undersigned, a Deputy Commissioner of the U. S. Department of Labor, Bureau of Employees' Compensation, has hereunto set his hand at San Francisco, California this 29th day of August, 19

Warren H. Pillsbury
Deputy Commissioner.
13th *Compensation District.*

U. S. Department of Labor
Bureau of Employees' Compensation
Longshoremen's and Harbor Workers'
Compensation Act
Thirteenth Compensation District
Room 126, 630 Sansome Street
San Francisco 11, California

Address Replies to:
The Deputy Commissioner

Refer to File No.

August 29, 1951

Mr. Jess I. Armenta
235 E. Johnson Street
Compton, California

Arrow Stevedore Company
Berth 179
Wilmington, California

Fireman's Fund Insurance Company
Citizens Bank Building
Wilmington, California
Attention: Mr. Murray H. Roberts, Attorney

Fireman's Fund Insurance Company
233 Sansome Street
San Francisco, California

Mr. Joseph London, Vice President
ILWU, Local 13
234 Broad Avenue
Wilmington, California

Re: Jess I. Armenta, 2201-180
Arrow Stevedore Company
Inj: 8/28/50

Gentlemen:

Please be advised that the hearing now set for Tuesday, September 18, 1951, at 10:30 A.M. at the Conference Room, Longshoremen's Dispatching Hall, Wilmington, California, *has been postponed indefinitely.* Parties need not appear.

Yours very truly,
WARREN H. PILLSBURY

Warren H. Pillsbury
Deputy Commissioner
13th Compensation District

WHP:ecp:sh

Form US-206 B
Revised December 31, 1941

APPENDIX B-5

United States of America

FEDERAL SECURITY AGENCY, BUREAU OF EMPLOYEES' COMPENSATION

FEDERAL SECURITY AGENCY
BUREAU OF EMPLOYEES' COMPENSATION
Warren H. Pillsbury, Deputy Commissioner
Thirteenth District
Room 126, Appraisers Building
630 Sansome Street
San Francisco 11, California

IN THE MATTER OF THE CLAIM FOR COMPENSATION UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT.

LEE BRADA,
Claimant.

against

ARROW STEVEDORE COMPANY,
Employer.

FIREMAN'S FUND INSURANCE CO.,
Carrier.

Case No. 2201-120
Claim No. 3399
NOTICE OF HEARING
Injury of 4-10-49

(R) To Mr. Lee Brada
2781 Bush St.,
San Francisco, California

Mr. Julius Stern
ILWU., Local #10
Pier 19 North
San Francisco, California

(R) To Arrow Stevedoring Co.,
310 Sansome Street
To San Francisco, California

(R) To Firemen's Fund Insurance Co.,
Attn: Mr. E. R. Kay, Attorney at Law
To 233 Sansome St.,
San Francisco, California

RECEIVED

You are hereby notified that upon application made by claimant

, an interested party in the above-entitled claim, a hearing on such claim is hereby ordered, to be held before WARREN H. PILLSBURY

Deputy Commissioner 13th Compensation District of the Federal Security Agency, Bureau of Employees' Compensation, at ROOM 126, 630 SANSOME STREET,

in the City of SAN FRANCISCO, CALIFORNIA, on the THURSDAY, the 18th

day of MAY, 1950, at 10:00 o'clock a. m. of that day.

Purpose: US-203, employee's claim for compensation, filed to protect the running of the Statute of Limitations.

(SEE ATTACHED LETTER)

In testimony whereof, the undersigned, a Deputy Commissioner of the Federal Security Agency, Bureau of Employees' Compensation, has hereunto set his hand at San Francisco, California,

this 13th day of May, 1950

Calendar
Reporter
pr

Warren H. Pillsbury
Deputy Commissioner,
13th *Compensation District.*

US-601-A

Case No. 2201-120

Office of Deputy Commissioner Warren H. Pillsbury.
Administering Longshoremen's and Harbor Workers' Compensation Act.

May 8, 1950

NOTICE TO EMPLOYER AND INSURANCE CARRIER THAT CLAIM HAS BEEN FILED.

Gentlemen:

There is enclosed copy of a claim for compensation which has been filed by claimant, Lee Breda. You should proceed to pay compensation promptly when due as provided by Section 14 of the Longshoremen's and Harbor Workers' Compensation Act, and to furnish medical treatment in accordance with Section 7(a) thereof, unless liability to pay compensation is controverted.

Section 14(d) provides that if the employer controverts the right to compensation he shall file with the deputy commissioner, on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted.

Under the Bureau's regulations where claim is filed the employer or insurance carrier, within 10 days from the date notice is received that claim has been filed, is required to file answer thereto.

Answer is enclosed for use in the event the right to compensation is controverted and the claim is to be opposed.

The original notice and answer should be filed with the deputy commissioner at the above address and copy thereof served upon the claimant either personally or by mailing it to the address given in the claim if you deny liability, otherwise you should proceed to pay compensation immediately as provided by the said Act and not require the claimant, as well as yourself, needlessly to incur the expenses incidental to a hearing before the deputy commissioner.

Very truly yours,
WARREN H. PILLSBURY,
Deputy Commissioner.

Federal Security Agency

Bureau of Employees' Compensation
Warren H. Pillsbury, Deputy Commissioner
Thirteenth District

Room 126, Appraisers Building
630 Sansome Street
San Francisco 11, California

pr

Case No. 2201-120

EMPLOYEE'S CLAIM FOR COMPENSATION.

1. Name of employee: Lee D. Breda.

* * * * * * *

9. Employer: Arrow Stevedoring Company.

* * * * * * *

14. Date of accident or first illness, the 10th day of April, 1949, at 8 o'clock P. M.

15. How did accident happen or how was occupational disease caused? While placing roller beams in the shelter deck, I became over balanced and fell in the hatch.

16. State fully nature of injury or occupational disease: Injury to both ankles and right knee.

* * * * * * *

Signed by Lee Breda,

Claimant.

Federal Security Agency
Bureau of Employees' Compensation
Longshoremen's and Harbor Workers'
Compensation Act
Thirteenth Compensation District
Room 126, 630 Sansome Street
San Francisco 11, California

Address Replies to:
The Deputy Commissioner
Refer to File No. .....

May 8, 1950

Mr. Lee Breda
2781 Bush Street
San Francisco, California

Arrow Stevedore Co.,
310 Sansome Street
San Francisco, California

Fireman's Fund Insurance Co.,
Attn: Mr. E. R. Kay, Attorney at Law
233 Sansome St.,
San Francisco, California

Mr. Julius Stern
ILWU, Local 10
Pier 18 North
San Francisco, California

Re: Lee Breda, 2201-120
Arrow Stevedoring Company
Injury of 4-10-49

Gentlemen:

Please be advised that the hearing in the above case now set for Thursday, May 18th, 1950 at 10:00 a.m., at Room 126, 630 Sansome Street, San Francisco, California, *has been postponed indefinitely.*

Yours very truly,
WARREN H. PILLSBURY

Warren H. Pillsbury
Deputy Commissioner
13th Compensation District

pr

APPENDIX B-6

Form US-214 B
Revised December 31, 1941

United States of America

U. S. DEPARTMENT OF LABOR, BUREAU OF EMPLOYEES' COMPENSATION

IN THE MATTER OF THE CLAIM FOR COMPENSATION UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT.

John B. Fagg — *Claimant.*

against

Jones Stevedoring Co. — *Employer.*

Fireman's Fund Ins. Co. — *Carrier.*

Case No. 195-452 al-3624

NOTICE OF HEARING

Inj: 9/16/50

To Mr. John B. Fagg, 1103 Orizaba, Long Beach, California

To Jones Stevedoring Company, Pier A, Berth 5, Long Beach, California

To Fireman's Fund Insurance Company, Citizens Bank Building, Attention: Mr. Murray H. Roberts, Attorney, Wilmington, California

To Fireman's Fund Insurance Company, 233 Sansome Street, San Francisco, Calif.

To Mr. Joseph Longan, Vice President, ILWU, Local 13, 234 Broad Avenue, Wilmington, California

To

You are hereby notified that upon application made by John B. Fagg, an interested party in the above-entitled claim, a hearing on such claim is hereby ordered, to be held before Warren H. Pillsbury, Deputy Commissioner 13th Compensation District of the U. S. Department of Labor, Bureau of Employees' Compensation, at The conference room, Longshoremen's Dispatching Hall, #343 BROAD AVENUE, WILMINGTON, CALIFORNIA in the City of on the Tuesday, 7th day of August, 1951, at 10:00 o'clock A. m. of that day.

U.S. 203, U. S. 213, and US-215A served on the parties with this notice.

See attached letter postponing hearing. Formal claim filed to toll the statute of limitations.

In testimony whereof, the undersigned, a Deputy Commissioner of the U. S. Department of Labor, Bureau of Employees' Compensation, has hereunto set his hand at San Francisco, California this 23rd day of July, 1951

Calendar
Filed
eap

Warren H. Pillsbury
Deputy Commissioner.
13th *Compensation District.*

Federal Security Agency
Bureau of Employees' Compensation
Longshoremen's and Harbor Workers'
Compensation Act
Thirteenth Compensation District
Room 126, 630 Sansome Street
San Francisco 11, California

Address Replies to:
The Deputy Commissioner
Refer to File No. .....

July 23, 1951

Mr. John B. Page
1103 Orizaba
Long Beach, California

Jones Stevedoring Company
Pier A, Berth 5
Long Beach, California

Firemen's Fund Insurance Company
Citizens Bank Building
Attention: Mr. Murray H. Roberts, Attorney
Wilmington, California

Firemen's Fund Insurance Company
233 Sansome Street
San Francisco, California

Mr. Joseph London, Vice President
ILWU, Local 13, 234 Broad Avenue
Wilmington, California

Re: John B. Page, 195-452
Jones Stevedoring Co.
Inj: 9/16/50

Gentlemen:

Please be advised that the hearing now set for Tuesday, August 7, 1951 at 10:00 A.M. at The Conference Room, Longshoremen's Ditpatching Hall, #343 Broad Avenue, Wilmington, California, *has been postponed indefinitely.* Parties need not appear.

Yours very truly,

WARREN H. PILLSBURY

Warren H. Pillsbury
Deputy Commissioner
13th Compensation District

WHP:ecp

BRIEF FOR RESPONDENTS

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 229

WARREN H. PILLSBURY, Deputy Commissioner for The Thirteenth Compensation District, Under The Longshoremen's and Harbor Workers' Compensation Act, *Petitioner,*

vs.

UNITED ENGINEERING COMPANY, a Corporation, and FIREMAN'S FUND INSURANCE COMPANY, a Corporation, *Respondents.*

WARREN H. PILLSBURY, Deputy Commissioner for The Thirteenth Compensation District, Under The Longshoremen's and Harbor Workers' Compensation Act, *Petitioner,*

vs.

UNITED ENGINEERING COMPANY, a Corporation, and FIREMAN'S FUND INSURANCE COMPANY, a Corporation, *Respondents.*

WARREN H. PILLSBURY, Deputy Commissioner for The Thirteenth Compensation District, Under The Longshoremen's and Harbor Workers' Compensation Act, *Petitioner,*

vs.

MATSON TERMINALS, INC., a Corporation, and FIREMAN'S FUND INSURANCE COMPANY, a Corporation, *Respondents.*

ALBERT J. CYR, Deputy Commissioner for The Thirteenth Compensation District, Under The Longshoremen's and Harbor Workers' Compensation Act, *Petitioner,*

vs.

UNITED ENGINEERING COMPANY, a Corporation, and FIREMAN'S FUND INSURANCE COMPANY, a Corporation, *Respondents.*

BRIEF FOR RESPONDENTS.

LYMAN HENRY,
351 California Street, San Francisco 4, California,
Proctor for Respondents.

JOHN H. BLACK,
EDWARD R. KAY,
233 Sansome Street, San Francisco 4, California,
Of Counsel for Respondents.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO

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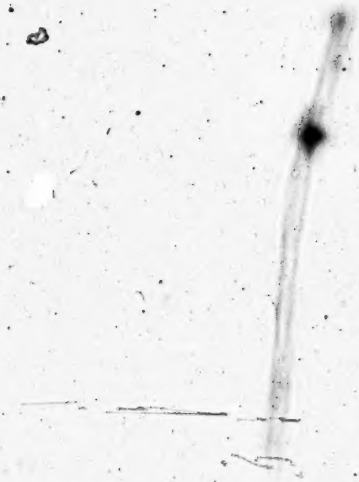

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vs.

UNITED ENGINEERING COMPANY, a Corporation, and FIREMAN'S FUND INSURANCE COMPANY, a Corporation, *Respondents.*

BRIEF FOR RESPONDENTS.

OPINIONS BELOW.

The opinion of the United States District Court for the Northern District of California, Southern Division (IR. 15; IIR. 15; IIIR. 14; IVR. 15)[1] is reported at 93 F. Supp. 898[2]. The opinion of the United States Court of Appeals for the Ninth Circuit (IR. 44; IIR. 70; IIIR. 42; IVR. 56) is reported at 187 F. (2d) 987.

JURISDICTION.

The judgments of the Court of Appeals were entered on March 14, 1951. (IR. 48; IIR. 74; IIIR. 46; IVR. 60.) By order of Mr. Justice Black dated June 7, 1951, the time for applying for certiorari was extended to and including August 11, 1951. The jurisdiction of this Court is invoked under 28 U. S. C. 1254.

QUESTION PRESENTED.

Whether the one-year period of limitation upon the filing of claims for compensation, as clearly defined by Section 13(a) of the Longshoremen's and Harbor Workers' Compensation Act, can properly be interpreted by judicial decree to mean that it

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[1]We shall employ designations IR, IIR, IIIR, and IVR in reference to Volumes I, II, III, and IV respectively of the Transcript of Record.

[2]Because of the existence of a question of law common to each of the four cases, they were consolidated both for trial and on appeal, and all four cases were dealt with in single opinions both in the District Court and in the Court of Appeals.

shall commence from the date disability results rather than from the date of injury.

STATUTE INVOLVED.

The pertinent provisions of the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424, 33 U. S. C. 901 et seq., are set out in the Appendix A.

The material provisions of Section 13(a) of said Act, 33 U. S. C. 913(a), are as follows:

> "The right to compensation for disability under this Act shall be barred unless a claim therefor is filed within one year after the injury * * * except that if payment of compensation has been made without an award on account of such injury * * * a claim may be filed within one year after the date of the last payment * * *."

STATEMENT OF THE CASE.

We shall refer briefly to certain material and important facts in each of the consolidated cases which were not included in petitioners' statement of the case.

The Johnson case.

Claimant Johnson, who was injured on May 28, 1947, filed a claim on January 17, 1949. No compensation was paid. At the hearing held before appellant Deputy Commissioner he testified that on

March 15, 1948 he suffered a reduction in pay by reason of having been "lowered from leaderman to welder" at which time claimant "was told by Dr. Dixon and Dr. Holcomb, both, not to use a heavy * * *." (IR. 28.) It was after that, namely, May 15, 1948, that a change occurred in ownership of the employing firm, at which time claimant was assigned to work on boats which he could not do, and as a result was laid off. (IR. 29.) Medical reports introduced in evidence (IR. 33-35) indicate claimant had suffered considerable and continuing injury to his neck and that claimant's condition was such that he was unable to sleep, that he had pain extending from the base of his neck into his head and into the top of the left shoulder, and that his occupation of welding above his head increased and aggravated the discomfort.

We consider it of the utmost importance that petitioner Pillsbury in his findings of fact of March 17, 1949 found, among other things as follows:

> That on May 12, 1947 claimant Johnson "sustained personal *injury* arising out of and in the course of his employment with the employer herein and resulting in *disability* as follows: While going up a ladder he bumped his head and neck on a cross-beam, sustaining extensive strain of the muscles of the neck which still continue painful; that defendants pleaded at the first hearing that the claim was barred by the period of limitations prescribed by said Act; that the claim was filed on January 17, 1949; that Employer's First Report of Injury was filed on May

28th, 1947; that the employer continued claimant in lighter work in a partially disabled condition without reduction in wages because of such physical impairment until it disposed of its ship-repair plant on May 15, 1948; that by reason of such provision of lighter work claimant did not lose time from work as a result of his injury until about June 15, 1948; that defendants have furnished claimant with medical treatment throughout; * * *." (IR. 6-7.) (Emphasis supplied.)

The Curnutt case.

Claimant Curnutt, who was injured on February 14, 1947, filed a claim on January 17, 1949. No compensation was paid. Medical reports introduced in evidence at the hearing indicate that Curnutt received a severe injury to his back which caused him pain and discomfort at all times. On the day of the accident he had just one hour to go before the job was finished, but the following day his pain was so severe that he was unable to work and he reported for medical treatment at intervals of twice a week for a period of two months. He was off for a period of about five days at that time, and after he returned to work he continued to notice a considerable amount of pain and discomfort in his back and was told by the doctor that he "must not do heavy work." (IIR. 34.) He was fitted with a low back support. (IIR. 54.) He also testified at the hearing that in January, 1948, (within 1 year of the date of injury), his back was bothering him so much that he took off two weeks from his work. (IIR. 34-35.)

Petitioner Pillsbury's Compensation Order of April 8, 1949 provides among Findings of Fact the following: That on February 18, 1947 Claimant Curnutt

> "sustained personal *injury* arising out of and in the course of his employment and resulting in *disability* as follows: while lifting a heavy object, he wrenched his back; that defendants at the first and only hearing herein asserted the contention that the claim was barred by the period of limitations described by said act; that no compensation has been paid for said injury; that the claim for compensation was filed herein on January 17, 1949, that the employer submitted to the Deputy Commissioner its first report of injury in this matter on or about March 8th, 1947; that claimant was continued in lighter work and full wages by the employer after a disability and loss of working time of six days, until his employment was terminated on January 13, 1948, and that claimant did not lose wages in excess of seven days as a result of his injury until February 5th, 1948, that the employer had knowledge at intervals throughout the entire period from February 18, 1947, to the present time that claimant was suffering distress as a result of said injury, and that the employer provided medical treatment for him therefor during said period, * * *." (IIR. 5-7.)

The Shallat case.

Claimant Shallat, who was injured on November 21, 1947, filed a claim on May 23, 1949. No temporary disability was incurred and no compensation was paid. (IIIR. 25.) At the hearing before petitioner

Pillsbury claimant testified that "the left hand is still the same as it was when I got injured," and that he was suffering "terrific pains when I lift something. It goes right through me. It affects the whole hand, and lots of times I have to drop something, I cannot hold it with the left hand." (IIIR. 27.)

Petitioner Pillsbury, in his compensation order of July 28, 1949[3] included among his findings of fact the following: That claimant Shallat on November 21, 1947

> "sustained personal *injury* arising out of and in the course of his employment and resulting in *disability* as follows: He caught his left hand between a sling and a bight, causing a contusion of the left hand and exacerbation of a pre-existing progressive arthritis of the proximal joint of the second or middle finger; that the employer furnished claimant with medical treatment, etc., in accordance with Section 7(a) of the said Act; * * * that claimant did not sustain at said time any sufficient injury to the right hand to be a cause of any disability therein; that no compensation has been paid; that the claim for compensation was filed on May 23rd, 1949, the employer's first report was filed in the office of the Deputy Commission on February 16th, 1948 * * *." (TR. pp. 5 and 6, U. S. Court of Appeals No. 12,646. See Appendix C.)

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[3]Through an apparent error in printing Vol. III of the Transcript of Record before the Supreme Court at page 5 thereof incorporates the Deputy Commissioner's award for claimant Howard Johnson rather than for claimant Louis Shallat. (See page 5 of the Transcript of Record before the United States Court of Appeals, No. 12646.) For the convenience of the Court we have included the Deputy Commissioner's compensation order in claimant Shallat's case as Appendix C.

The Manos case.

Claimant Manos, who was injured on December 22, 1947, filed a claim on August 17, 1949. No compensation was paid. As found by the Deputy Commissioner, Manos received a definite and painful injury to his neck and head when he was struck on the head by an iron bar or saddle falling from above. Immediately after the accident, claimant was examined and X-rayed, and was given treatment right along by Dr. Stehr to whom he reported approximately every two weeks up to the date of the hearing. (IVR. 27.) He was advised by the doctor not to do any welding but to try to get an easy job, and not to get up on heights. His boss accommodated him in this type of work so he stayed on the job for a couple of months, at which time the whole yard was laid off. He then lost a week's time, and went to work for another employer. (IVR. 28.) He got a job as a welder, which gave him a higher scale of pay than he was getting at the time of his accident. He worked for the second employer for about a year, but still made visits to Dr. Stehr on an average of once a week. (IVR. 29.) Claimant continued to have the same symptoms as he experienced immediately following the accident, namely, that his neck "just clicks like crushing ice in there all the time, every move. It just crunches." That at first he noticed "just clicks" and that it then started developing more and more until at the time of the hearing there was a "real tight feeling as she comes as far as I can turn it to the right or left." (IVR. 30.) When asked at the hearing when he first developed that condition, claimant testified "Right

along, but just come not right at first, but since it started it continued getting worse and strong." (IVR. 31.) The first time he reported to his employer to inquire about compensation was August 17, 1949, 1 year and 8 months after the injury. (IVR. 32.)

Petitioner Cyr, in his compensation order of December 14, 1949 included among his findings of fact the following: That claimant Manos on December 22, 1947

> "sustained personal *injury* resulting in *disability* when he was struck on top of the head by an iron bar falling from above and he suffered strain of the musculature in the cervical region; that written notice of the injury was not given to the employer within thirty days following said injury, but that the employer had knowledge of the injury and has not been prejudiced by lack of such written notice; that the employer furnished claimant with medical treatment, etc., in accordance with the provisions of Section 7(a) of said Act * * *." (IVR. 6.)

While it is claimed at page 8 of petitioner's brief that the District Court made "its own independent reappraisal of the evidence" and reached the conclusion that "the claimants' earning capacity had been impaired from the dates of their physical injuries so as to have entitled them at that time to compensation in addition to full wages," the fact is that the District Court's opinion was based upon the Findings of Fact included in the compensation orders of the petitioners and evidence presented as set forth above.

SUMMARY OF ARGUMENT.

A. Section 13(a) of the Longshoremen's and Harbor Workers' Compensation Act (33 U. S. C. 913 (a)) is a clear and unambiguous provision designating a period of limitations within which claims for compensation may be filed. While there may be some understandable basis for argument that the period ought to be extended to permit the filing of claims in cases where there have been so-called "latent" injuries, there is nothing in the language of Section 13(a) or in any other provision of the Act which would permit an interpretation which petitioners are seeking in the cases at bar. Each claimant here suffered a distinct and painful injury which caused painful symptoms and required medical treatment for varying periods of time. In all but the *Shallat* case medical treatment was required up to the date of filing of the outlawed claims.

B. Some state compensation statutes such as in California provide in addition to a statute of limitations for *original* claims, a further period within which claims for "new or further disability" may be brought. California Labor Code Section 5410.[4]

Petitioners, however, are here seeking to obtain a tortured construction which would extend the period

[4] 5410. (11c), amended, 1949. "Nothing in this chapter shall bar the right of any injured employee to institute proceedings for the collection of compensation within five years after the date of the injury upon the ground that the original injury has caused new and further disability. The jurisdiction of the commission in such cases shall be a continuing jurisdiction at all times within such period. This section does not extend the limitation provided in section 5407."

of limitations indefinitely beyond the clearly defined and limited one-year period set forth in Section 13(a) of the Longshoremen's Act. If any such additional period is desirable it is for Congress alone to enact the necessary amendatory legislation.

C. The decisions mainly relied upon by petitioners as authority for extending the period of limitations provided by Section 13(a) of the Longshoremen's Act are all based upon *latent* conditions following injuries of minor consequence. Such is admittedly not the situation in any of the cases at bar, which involved known, specific, painful and disabling conditions that occurred at the time the injuries were sustained and which symptoms continued up to the time of the filing of the claims. The "latent injury" theory is based, quite understandably, upon the proposition that a claimant is excused from filing a claim where he has had no reasonable basis for knowing beforehand that the later and unexpected development is directly traceable to his original minor injury. These are special and unusual situations not at all comparable to the conditions prevailing in the present proceedings.

D. Statutes of limitations are looked upon with favor by all of our courts in order that there can be an ascertainable end to litigation. This applies to compensation acts as well as to any other statutes. If petitioners' argument were to be approved, there would never be an end to litigation arising out of claims filed under the Longshoremen's and Harbor Workers' Compensation Act, excepting only those

cases where some compensation payments had been made. This would conceivably result in a flood of stale, unmeritorious claims, and indeed, the Deputy Commissioners administering the Act would be called upon to hear and determine vast numbers of questionable claims—the very situation which petitioners are presently suggesting would be the result if the lower Court's opinion in these cases were to be sustained. Incidentally, there is no showing that such a condition now prevails. The fact of the matter is that as the law is presently interpreted by this Court in *Kobilkin v. Pillsbury*, 103 F. (2d) 667, affirmed, U. S. Supreme Court, 309 U. S. 619, rehearing denied, 309 U.S. 695, it has not been shown that compensation claimants have met with hardship or that their rights have been impaired thereby.

Petitioners at page 44 in their Brief claim that in their particular district "some 27,000 physical injuries were reported under the Act in 1946 (the last year in which detailed figures were reported) or 74 for each calendar day, in which the disability was 7 days or less" and that "if claims must be filed in all such cases to avoid the period of limitation, it would be necessary for the Deputy Commissioner, pursuant to the requirements of Section 19 of the Act (33 U. S. C. 919), upon receipt of each claim, to give notice thereof to the employer and compensation carrier, to investigate, to hold hearings and to adjudicate each claim." It is then argued that the Deputy Commissioner would find it difficult to properly perform his duties.

The foregoing is not based upon any evidence in the record, but if this Court is to take judicial knowledge of such claim, then we feel it is appropriate to point out to the Court that petitioners have long followed the practice of advising claimants who do not happen to be suffering wage loss that they should file formal claims for the very purpose of preventing such claims being barred by the statute of limitations. We shall hereafter discuss this at length and point out specifically instances and methods followed by petitioners in this common practice. In any event, if the Statute of Limitations as prescribed by Section 13(a) of the Act is deemed inadequate, we repeat, this is a matter for action by Congress and not by the Courts.

E. Petitioners' argument that the term "injury" as used in Section 13(a) of the Act should be construed to mean "compensable injury" is altogether contrary to the separate *definitions* of "injury" and "disability." This was clearly pointed out by the Court in the case of *Kobilkin v. Pillsbury,* supra, which case is controlling.

It would appear as set forth in footnote 13 at page 33 of respondents' brief that the real core of their argument is their contention that "compensation for disability resulting from physical injury is not barred unless the claim is filed more than a year after the employee *first becomes entitled to file a claim* for disability resulting from such physical injury." (Emphasis supplied.)

It is of utmost significance to note that no section or provision of the Act expressly or impliedly *prohibits* a claimant from filing a formal claim at any time after his injury—this regardless of whether he has suffered disability beyond 7 days. Indeed, as will be shown hereafter, petitioners themselves, as a matter of common practice where deemed necessary to protect the rights of claimants, urge and accept the filing of formal claims.

Twin Harbor Stevedoring & Tug Co. v. Marshall, 103 Fed. (2d) 513, is ample authority for the proposition that even where there is no wage loss, if the injured employee's earning capacity and ability to work is impaired he may file a formal claim for and be awarded compensation. The record shows that all of the present claimants suffered some degree of impairment of ability to work.

But aside from the question of impairment of ability to work or impairment of earning capacity, there has been no showing under the Act that there is any prohibition to the filing of claims at any time. On the contrary, as we shall demonstrate, claims have frequently been filed without any showing of wage loss.

This Court affirmed the theory followed by the lower Court that "the date of injury and not the subsequent date when incapacity develops is the one from which the time limitation must be reckoned." *Kobilkin v. Pillsbury,* supra. (103 F. (2d) at 669-670.)

ARGUMENT.

I

SECTION 13(a) OF THE LONGSHOREMEN'S AND HARBOR WORKERS' ACT BARS CLAIMS FOR COMPENSATION UNLESS FILED WITHIN ONE YEAR AFTER THE INJURY, AND IN THE CASES OF SPECIFIC KNOWN INJURIES THE PERIOD CANNOT BE EXTENDED.

The Longshoremen's and Harbor Workers' Compensation Act, Section 13(a), prescribes a definite period of limitations within which claims for compensation can be filed. As heretofore pointed out, the significant portion of this section (33 U. S. C. A. 913(a)) provides as follows: "The right to compensation for disability under this Act shall be barred unless a claim therefor is filed within one year after the injury * * *."

In petitioner's brief the word "injury" is emphasized and this Court is urged to approve the unfounded proposition that inasmuch as the congressional bill enacting this law originally used the word "accident" instead of "injury," the substitution of the latter term indicates that Congress intended that the time for filing a claim should begin to run from the date of "compensible injury," that is, where the injury results in disability beyond seven days. There is no basis in fact or reason for the claim that Congress had any such alleged intention. It is clearly apparent that the word "injury" instead of "accident" was used because "injury" is a much broader term in the sense that many conditions may arise from injury which could not conceivably be the

basis for a claim under the term "accident." This becomes at once obvious when reference is made to Section 2 of the Act (33 U. S. C. A. 902) which has to do with "definitions." Under subsection (2) thereof the term "injury" is defined as follows: "The term 'injury' means accidental injury or death arising out of and in the course of employment, *and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.*" (Emphasis added.) The foregoing definition demonstrates why the word "injury" was used in Section 13(a) instead of "accident," for the term "accident" would not include "occupational disease or infection as arises naturally out of such employment," nor would it include "injury caused by the willful act of a third person."

The reasons asserted in petitioners' brief for the substitution of the word "injury" for "accident" in Section 13(a) of the Act cannot therefore be taken seriously. That being so, the related argument that injury means "compensable injury" (disability beyond seven days) must also fall. True, some of the cases cited by petitioners go off on the ground that "compensable injury" was meant instead of "injury." It is hardly necessary to point out that had Congress intended to specify "injury" in that sense for the purpose of applying the statute of limitations it would have been a simple matter to have so desig-

nated the term, as has been done by some state legislative bodies in regard to state compensation acts.

Petitioners advance the argument that "in the absence of a clear and unambiguous manifestation of Congressional intent that the period of limitation is to begin before the employee is entitled to recover compensation, no such conclusion should be drawn by the Courts." (Pet. Br. 32.) We have shown above that the provision in question is unambiguous and we shall hereafter show that Petitioners, as a matter of common practice, urge and accept the filing of claims for the very purpose of protecting claimants against the running of the statute of limitations in those cases where no temporary disability is being suffered. It is therefore not at all our argument that, as claimed, "the period of limitation is to begin before the employee is entitled to receive compensation."

The equivocal employment of the term "legal injury" as used in the petitioner's brief, is not to be ignored. If a man in the course of his employment drops a hammer on his toe and fractures it, it seems elementary to us that he has in fact, as well as in the law, suffered an injury to his toe, and whether or not compensable disability ensues does not make the injury nonetheless real or "legal." Such injured workman has suffered a real, substantial and "legal" hurt and injury.

While in some quarters there has been acceptance of the philosophy that employers' rights are to be dealt with lightly, we think they cannot be entirely

ignored, for without employers, there would be no employees, injured or otherwise. To subject an employer to a rule that would permit workmen to file claims and recover compensation five, ten, or conceivably thirty or forty years following the true, though not immediately disabling injury, depending upon the whim of the individual workman, would be to establish a rule that might well suffocate employers, and consequently employment. It hardly seems consistent with American principles that a one year limitation period should apply to one injured workman, while a period of an unlimited number of years should apply to another injured employee who may choose not to claim disability until some future date of his own selection and convenience.

It has long been an accepted elementary principle that employers and all types of defendants are entitled to know precisely the period of time during which they are validly exposed to claims and law suits. How otherwise could they conduct their businesses? Of necessity the rules must be uniform and not subject to the whim or pain tolerance of individual workmen.

The petitioners would go to great and improper extremes to protect an employee from what they suggest would be "unscrupulous conduct" upon the part of the employers, but would offer the employer no protection whatever from claims upon the part of unscrupulous employees. They would open the door to frauds against which the employer could not hope to

protect himself after the passage of a number of years and thus be at the mercy of the unsupported testimony of the claiming employee. The probabilities are that in forty years not one of us here concerned will be living to testify as to what happened with respect to an unreported injury to a presently employed workman say of twenty years of age. But under the rule proposed such young man could in forty years come before the Deputy Commissioner and testify to an alleged injury of forty years before and forthwith be compensated. This example is not a fantastic one despite the fact it is seemingly incredible.

It will be demonstrated below that the Court of Appeals for the Ninth Circuit has heretofore considered most carefully the very section involved, namely, 13(a) of the Longshoremen's and Harbor Workers' Compensation Act, and held without equivocation that the language therein used is clear and unambiguous, and that in providing that a claim is barred unless filed within one year after the injury or within one year after the date of last payment of compensation, that the section means exactly what it says. This Court affirmed the lower Court's opinion and denied a petition for rehearing.[5]

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[5] *Kobilkin v. Pillsbury*, 103 F. (2d) 667, affirmed, U.S. Supreme Court, 309 U.S. 619, rehearing denied, 309 U.S. 695.

II

MODIFICATION OF ANY PROVISIONS OF THE LONGSHOREMEN'S ACT CAN BE ACCOMPLISHED ONLY THROUGH LEGISLATIVE AMENDMENT AND NOT BY JUDICIAL DECREE.

Many of the state compensation statutes, in addition to limitations of time for filing *original* claims, provide specifically for the filing of claims for so-called "new and further disability.". For example, California Labor Code Section 5405 provides that proceedings may be commenced for the collection of compensation benefits within one year from the date of injury or expiration of period covered by any payment of compensation, or the date of last furnishing of medical treatment.

In addition to these periods of limitation for the filing of original claims within the one-year period, the California law prescribes a *five-year* period within which claims for "new and further disability" may be brought. See Labor Code Section 5410, which reads as follows: "Nothing in this chapter shall bar the right of any injured employee to institute proceedings for the collection of compensation within five years after the date of the injury upon the ground that the original injury has caused new and further disability * * *."[6]

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[6]Section 22 of the Longshoremen's Act, 33 U.S.C.A. 922, provides for modification of awards as follows:

"Upon his own initiative, or upon the application of any party in interest, on the ground of a change in conditions or because of a mistake in a determination of fact by the deputy commissioner, the deputy commissioner may, at any time prior to one year after the date of the last payment of compensation

The foregoing demonstrates the obvious fact that for the situations in which "new and further disability" may arise at some later time after the original injury, provision can and has been made by *legislation*, not by "judicial amendment." If the Longshoremen's Act is inadequate in this respect it is surely not for the Courts to attempt to correct such omissions; only Congress can adopt new legislation or enact necessary amendments to the existing law.

III

THE AUTHORITIES RELIED UPON BY PETITIONERS ARE CONCERNED WITH SO-CALLED LATENT INJURIES, WHEREAS THE PRESENT CASES INVOLVE SPECIFIC, DEFINITE AND OBVIOUS INJURIES OF WHICH THE CLAIMANTS WERE AT ALL TIMES FULLY AWARE.

The case of *Di Giorgio Fruit Corp. v. Norton*, 93 F. (2d) 119, certiorari denied, 302 U. S. 767 (strongly relied upon by petitioners), involved a *latent* condition following an injury consisting of contusions and lacerations to the globe of his left eye when he was struck by a bunch of bananas. He was disabled for about one week and thereafter resumed his employment for approximately ten months, following which he was confined to prison for some eighteen months. During his confinement he felt symptoms of

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whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim, review a compensation case in accordance with the procedure prescribed in respect of claims in section 919 and in accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. • • •"

his eye and was treated by the prison authorities. After his release from prison he obtained further treatments and in August, 1936, approximately four years after the injury, he filed a claim under the Longshoremen's Act for compensation for permanent disability resulting from the loss of the sight of his eye. In the course of the hearings before the Deputy Commissioner, claimant testified that the first time he noticed "anything serious the matter" with his his eye was just a few weeks after the hearing. It was found that the injury to claimant's eye "was by its nature a progressive one" resulting from the injury and proceeding through various progressive stages of degeneration, culminating in a cataractous condition, and that the claimant "*became aware of this condition* in the month of August, 1936," four years after the injury, whereupon he immediately filed his claim. (Emphasis added.)

It is important to note the comments of the Court of Appeals in the *Di Giorgio* case, 93 F. (2d) at 120, as to whether the claimant's condition "should have been observable" by him "long prior to the time of the filing of his claim." The Court pointed out that one of the physicians testified that the condition might not have been observed by the claimant until August, 1936. This discussion obviously concerns the question of whether the claimant was *unaware of his condition* and therefore excused from filing his claim within the prescribed one-year period. The Court seemed to excuse a delay in the filing of the claim until the condition was "reasonably apparent."

The cases at bar are quite dissimilar, since each claimant here was under medical care and fully aware of his injury and continuing painful symptoms. We respectfully submit that if the holding of the Court of Appeals in the *Di Giorgio* case ever was good law it has been overruled by this Court in the case of *Kobilkin v. Pillsbury*, 103 F. (2d) 667, affirmed, U. S. Supreme Court, 309 U. S. 619, rehearing denied, 309 U. S. 695. (This opinion will be discussed fully below.)

Another case relied upon by petitioners is *Potomac Electric Power Co. v. Cardillo*, 107 F. (2d) 962. The claimant in that case was struck on the head by the metal end of an air hose. He was treated for a laceration and concussion in the emergency hospital for two days, and then returned to work without any further treatment or disability and continued working for approximately one and one-half years, from which time on he worked very little. About two years following his injury a psychiatrist informed claimant "that he was suffering from a progressive disease of the brain" caused by the said injury. Three months thereafter he filed a claim for compensation. The U. S. Court of Appeals for the District of Columbia held that the statute of limitation did not bar the claim, citing *Kropp v. Parker*, 8 F. Supp. 290, and the *Di Giorgio* case, supra. Here again, the *Kobilkin* case is controlling, and in any event, the facts differ from the present claims in that the claimant in the *Potomac* case, except for the two days following his injury, had no medical treatment. Furthermore, there

were apparently no symptoms and the claimant was unaware of any condition resulting from the injury until approximately two years thereafter when he was examined and found to be suffering from "a progressive disease of the brain," following which he immediately filed a claim.

It is not true as claimed at page 10 of petitioners' brief in support of their application for certiorari that "The conflict of decisions among the circuits thus presented was left unresolved by this Court's later affirmance, without opinion and by an equally divided Court, of the *Kobilkin* decision." As we have pointed out, the cases which petitioners urge as authority for their tenuous position are based on *latent* conditions where the injured employees were not aware of the extent of their injuries until the serious conditions developed some time after the statutory period. In the cases at bar, each of the claimants sustained a specific injury, and each of them was under medical treatment and suffered painful symptoms from the date of their injuries up to the date of the filing of their respective claims.

Another authority is urged by petitioners, namely, *Great American Indemnity Co. v. Britton*, 179 F. (2d) 60, decided by the United States Court of Appeals for the District of Columbia Circuit, which it is claimed is in conflict with the holdings in the present cases. There the situation is quite distinguishable. In the *Great American Indemnity* case a carpenter suffered an injury to his leg, the nature of which was erroneously diagnosed by a doctor as being "an ill-

ness (a thrombosis) in the leg rather than from an accidental injury." The injury occurred on March 11, 1946, but it was not until April 4, 1947, more than one year after the accident, when claimant was examined by an orthopedic specialist who found that the achilles tendon had been torn through its major part and that an operation was required. A formal claim for compensation was filed on May 16, 1947. In holding that the claim was timely filed, the Court referred to the *Potomac Electric* case, supra, and held that since the claimant had been given improper medical advice to the effect that his condition was non-industrial he could not, "in good conscience" have filed a claim. The Court went on to say that

> "Ignorance based on completely erroneous advice from a physician can be even more profound—and more dangerous in its consequences—than ignorance based on no advice at all. Such advice effectively prevents a conscientious employee, or a lawyer regardful of the standards of his profession, from filing a claim for an award, at least until different advice of equal or a higher standing is received. We cannot place a premium on the filing of claims which fly in the face of professional advice and ethical standards. There is no suggestion here that claimant acted negligently or in bad faith. In no sense is this case one involving mere delay and laxness in the filing of a claim." (179 F. (2d) 60, 62.)

It is of great significance to note that the Court in the *Great American Indemnity* case declared (p. 62) as follows:

> "To be distinguished also is the situation in *Kobilkin v. Pillsbury*, 9 Cir., 103 F. (2d) 667, affirmed by an equally divided Court, without opinion, 309 U. S. 61, 60 S. Ct. 465, 84 L. Ed. 983. The Court there sustained the finding of the Deputy Commissioner that a claim, filed after one year had elapsed from the date when the injuries occurred, was not timely. *In that case, not only was the injury patent, but the employee at all times realized the casual connection between the accident and his subsequent suffering, the only known factors being the extent of the injury and the likelihood of recurrent suffering.* No element of erroneous medical advice was present." (Emphasis supplied.)

It can hardly be said, therefore, that the *Kobilkin* case or the cases at bar are in conflict with the holding of the Court of Appeals in *Great American Indemnity v. Britton*, supra, which is a situation where the injured employee was not aware of the industrial character of his condition. In the *Kobilkin* case and in the cases at bar, the injured employees were fully aware of their injuries, were under medical care and suffered continuing painful symptoms.

The arguments urged in the present petition are based upon substantially the same reasons urged heretofore, and which were considered and rejected by this Court on petition for certiorari and petition for rehearing in the *Kobilkin* case. This Court has already considered and decided the question here presented.

As we have said, the reasoning of the authorities relied upon by petitioners was based in each case

upon special situations involving *latent* injuries and conditions. No such situation prevails in any of the cases at bar.

IV

THE LONGSHOREMEN'S ACT PERMITS THE FILING OF CLAIMS AT ANY TIME AFTER INJURY AND PETITIONERS HAVE LONG FOLLOWED SUCH PRACTICE.

We respectfully submit that it is not true as claimed in petitioners' brief (p. 21) that "In holding that the period of limitations begins from the time of the accident instead of from the time the injury becomes compensable, the Court below held, in effect that it begins to run before the cause of action accrues." For one thing, if an injured employee continues to suffer pain and discomfort for as long as a year from the date of his injury, his condition may well be *permanent*. In such case, he is put on notice by his prolonged and painful condition and he is authorized under the Act to file his claim for compensation. Section 19(a) (33 U. S. C. A. 919(a)) by providing that "a claim for compensation may be filed at any time after the first seven days of disability following any injury * * *" does not *prohibit* a claimant from filing a claim until there has first been a period of seven days of temporary disability. There are many cases where the injuries do not cause temporary disability, but this has never resulted in barring the filing of claims of permanent disability.

One of the very claims before this Court, namely, that of Claimant Shallat is just such a case. To fol-

low petitioners' argument to its logical conclusion, Shallat cannot maintain a claim because he has never incurred "the first seven days of disability."

Stripped of all of its ramifications, petitioners' argument simply is, as set forth on page 23 of their brief, footnote 13, that "compensation for disability resulting from physical injury is not barred unless the claim is filed more than a year after the employee first becomes entitled to file a claim for disability resulting from such physical injury."

As a matter of fact petitioners herein have long followed a practice of initiating and permitting the filing of claims by injured employees expressly to prevent the running of the statute of limitations. See Appendix B-1 where the notice indicates "U. S.-203, employee's claim for compensation filed to stop the running of the Statute of Limitations."; Appendix B-2 in which the notice provides "U. S.-203, employee's claim for compensation, filed to protect the running of the Statute of Limitations." (See attached letter); Appendix B-3 in which the notice provides "This prehearing conference or hearing is set on the initiative of the Deputy Commissioner. Statute of Limitations may run March 30, 1951"; Appendix B-4 in which the notice of hearing refers to a letter postponing the hearing indefinitely; Appendix B-5 wherein it is provided "Purpose: U. S.-203, employee's claim for compensation, filed to protect the running of the Statute of Limitations. See Attached Letter."; Appendix B-6 in which the notice provides "U. S. 203, U. S. 215 and U. S.-215A served

on the parties with this notice. See attached letter postponing hearing. Formal claim filed to toll the statute of limitations."; Appendix B-7 which provides "U. S.-203, Formal claim filed to toll the statute of limitations. See attached letter postponing hearings" and; Appendix B-8 which is a letter from the Deputy Commissioner establishing an informal permanent disability estimate and pointing out that "As Mr. James did not lose over seven days time from work at the time of his injury he will be in danger of his right to this compensation being outlawed unless it is paid or the claim filed within one year from the date of the injury or by November 6 of this year. To be safe, Mr. James should execute and forward to this office his claim for compensation by November 1, if payment is not received by then. The forms are enclosed, as the time is short."

Indeed, Section 19(a) (33 U. S. C. A. 919(a)) does not *prohibit* the filing of a claim until "after the first seven days of disability following injury." The Section merely says that "A claim for compensation *may* be filed * * * at any time after the first seven days of disability following any injury." As pointed out, if this section were prohibitive against the filing of any claim unless there was first a period of seven days of disability, claimant Shallat and many other claimants in his position would never be able to file a claim. Such an absurd result was never intended by Congress.

The reference in the statute to the filing of a claim "any time after the first seven days of disability fol-

lowing any injury" obviously is in keeping with Section 6 (33 U. S. C. A. 906) which provides that "no compensation may be allowed for first seven days of disability." In other words, since compensation for *temporary* disability could not possibly be awarded where injury causes temporary disability for seven days or less, there would be no basis for a claimant to perform the idle act of filing a claim for temporary disability in such case. However, if for example, the claimant were in need of medical treatment which the employer refused to furnish, even though no period of temporary disability were involved, the employee would still be entitled to file a claim for medical benefits. It is therefor abundantly clear that Section 19(a) (33 U. S. C. A. 919(a)) was never intended to deny the right to file a claim excepting in those cases of disability in excess of seven days.

V

THE BACKGROUND, THEORY, AND PURPOSES OF STATUTES OF LIMITATION REQUIRE THE COURTS TO LOOK WITH FAVOR UPON SUCH STATUTES, AND TO CONSTRUE THE LIMITATION LIBERALLY SO AS TO EFFECT THE INTENTION OF CONGRESS.

To adopt the contentions of petitioners would literally mean that there would be no statute of limitations whatsoever in any case where temporary disability did not extend beyond seven days, whereas in a case of injuries involving a disability period and payment of compensation beyond the waiting period,

the claim would be barred by the one-year statutory period.

A study of the origin and development of statutes of limitation indicates that while in the early development of this phase of the law such a defense was unpopular and was often circumvented by the Courts, the wisdom and need for legislations of this nature is now fully acknowledged. We refer to the following significant commentary from 34 Am. Jur. 24:

> "This hostility of the Courts toward the limitation statutes seems to have been transplanted to this country as a part of the common law. In time, however, the legislative policy came to be recognized as controlling, and the duty of the Courts to give effect thereto to be fully recognized. The modern tendency is, although there are some cases which contain statements to the contrary, to look with favor upon the defense. Statutes of limitation are now considered as wise and beneficient in their purpose and tendency; they are looked upon as statutes of repose, and are held to be rules of property vital to the welfare of society. Such statutes are deemed to be in the interest of morals, serving to prevent perjuries, frauds, and mistakes, and to render people attentive to the early adjustment of demands, and prevent the disturbance of settlements which have been made but of which the proof may have been lost. While the Courts will not strain either the facts or the law in aid of a statute of limitations, nevertheless it is established that *such enactments will receive a liberal construction in furtherance of their manifest object, are entitled to the same respect as other statutes, and ought not to be explained away.*" (Emphasis added.)

See also *Fontana Land Co. v. Laughlin,* 199 Cal. 625 at page 636, wherein the Supreme Court of California held

> "The power to nullify acts of the legislature prescribing a limitation upon the time within which actions may be commenced is not a judicial prerogative. Statutes of limitation have become rules of property. They are vital to the welfare of society and are favored by the law."

Again, in 34 Am. Jur. 41, it is stated that

> "The courts are inclined to construe limitation laws liberally, so as to effect the intention of the legislature. Such statutes will be given the same effect as other enactments, and unless compelled to do so by the force of former decisions, *the Courts will not give a strained construction in order to evade their effect.*" (Emphasis added.)

What petitioners are asking this Court to do is to read into the statute some exception not provided for in the law. As stated in 34 Am. Jur. 44:

> "In view of the favorable light in which statutes of limitation are now regarded, their application usually may not be evaded by implied exceptions, or by the interpolation of new provisions. As a general rule, the enumeration by the legislature of specific exceptions by implication excludes all others, and * * * the Courts ordinarily are without power to read into statutes, by construction, exceptions which have not been embodied therein."

We call the Court's attention specifically to the following statement contained in 34 Am. Jur. 151:

> "It has been held that the Courts in construing a special statute of limitation will not read another statute into it and thus incorporate exceptions not contained therein, or give it any new or unusual interpretation."

There could never be an end to litigation arising out of claims filed under the Longshoremen's Act if petitioners' contentions were to be adopted. There would be no time limit on when a claimant could revive an old, stale claim. Were the practice to become widespread, which in all likelihood would be the case, the offices of the various Deputy Commissioners would be called upon to hold hearings on large numbers of stale and unmeritorious claims, with the effect that the very thing petitioners complain about, namely, being deluged with more claims than they could handle, would surely be the result. It would not be possible to close any claim, and the statute of limitations would become nonexistent, a situation which would plainly defeat the clearly expressed intentions of Congress.

Even the most liberal state workmen's compensation acts do not impose upon an employer unlimited liabilities forever.

VI

THE KOBILKIN CASE HOLDING THAT "ONE YEAR AFTER THE INJURY" MEANS EXACTLY THAT IS CONTROLLING.

In 1939 this Honorable Court had occasion to consider the proper interpretation to be given to Section 13(a) of the Longshoremen's Act in the case of *Kobilkin v. Pillsbury*, 193 F. (2d) 667, affirmed, U. S. Supreme Court, 309 U. S. 619, rehearing denied, 309 U. S. 695. Petitioners attempt to distinguish this case, but we believe a careful analysis of the lower Court's opinion and discussion of the meaning of this Section of the Act will demonstrate beyond doubt that the language employed by Congress means just what it says.

The claimant in the *Kobilkin* case was injured on June 7, 1935 when he was struck on the left shoulder by a sack of sugar which had dropped from a sling load. It was found that he had sustained a bad bruise from which he was disabled for three weeks following the accident, during which time compensation was voluntarily paid to him. He continued to experience physical pain but suffered no further loss of wages on account of the injury until January 9, 1937, on which date he became aware of severe pain in his shoulder and went to a doctor of his own choice who operated on his shoulder for excision of a subdeltoid bursa. It was found at the operation that there was a separation of the bones of the shoulder. On March 3, 1937 a claim for compensation was filed. The Deputy Commissioner denied the claim on the ground that it had been filed more than one year from the date

of last payment of compensation, and was therefore barred. The Court of Appeals analyzed the provisions of Section 13(a) of the Longshoremen's Act, 33 U. S. C. A. 913(a), and considered carefully not only the portion of the section dealing with claims barred because not filed within "one year after the date of last payment" of compensation, but also the provision in the section that the right to compensation "shall be barred unless a claim therefor is filed within one year after the injury." In that regard the law was declared to be as follows (103 F. (2d) 667, at 670):

> "The terms 'injury' and 'disability,' separately defined in the statute are not synonymous. It has not been suggested that the injury from which appellant suffers is an occupational disease. Admittedly, it is an accidental injury arising in the course of employment. It was inflicted at the time of the accident, not when its full extent was first noted at the later time. The trauma in fact resulted in an immediate though temporary disability for which appellant was paid compensation. The circumstance that appellant again became disabled a year and a half later, and the more serious nature of the injury was then for the first time recognized, does not change the situation. The claim was not filed until more than a year after the occurrence of the injury and more than a year after the last payment of compensation. Under the plain terms of Section 13(a) of the statute the claim is barred. If we turn to Section 22 and assume a change of condition we again encounter the statutory bar."

It is manifestly clear from the foregoing language that the Court of Appeals recognized and considered the importance of the fact that the terms "injury" and "disability" are separately defined by the Act.[7]

Petitioners' argument that the word "injury" in Section 13(a) should be construed to mean "compensable injury" is contrary to the separate definitions for "injury" and "disability." Nor is there any rational basis for the argument made by petitioners in the Court below that "injury" as used in the section under consideration means the date when a claimant "knows or has reason to know of the existence of his physical disability and its relation to the employment," or that "the time for filing claim does not begin to run until this awareness exists." (Page 33, petitioners' brief in Court below.)

In this respect we refer to the declaration of the Court of Appeals in the *Kobilkin* case (103 F. (2d) at 670) as follows:

> "Admittedly, it is an accidental injury arising in the course of employment. *It was inflicted at the time of the accident, not when its full extent was first noted at the later time.*" (Emphasis added.)

---

[7] "The term 'injury' means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment." Sec. 2(2). "'Disability' means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." Sec. 2(10). (13 U.S.C.A. 902 (2), (10).)

We repeat, the same argument now made by petitioners in urging that Section 13(a) should have an interpretation different from the actual and clear wording thereof was indeed considered and rejected by this Court in affirming the lower Court's pronouncement in the *Kobilkin* case (103 F. (2d) at 670) as follows:

> "It was the manifest Congressional intent to deny compensation in all cases of disability arising from accidental injury unless claim is filed within the time limited. *No provision is made for exceptional cases. We agree that the act is to be liberally construed, but neither the deputy commissioner nor the Courts have the power to legislate; and nothing short of legislation would make relief possible in a case like this.*" (Emphasis added.)

It is of utmost significance that Judge Mathews in a concurring opinion (103 F. (2d) at 671) declared emphatically that:

> "As used in the Longshoremen's and Harbor Workers' Compensation Act (Section 13), the phrase 'one year after the injury' means just that. It does not mean one year after the claimant's discovery of the true nature of the injury. The Act says nothing about discovery."

Judge Mathews' discussion was not confined to claims where compensation had been paid but also to claims where none had been paid. He stated very clearly that

> "*the phrase 'one year after the injury' means just that. It does not mean one year after the*

claimant's discovery of the true nature of the injury." (Emphasis added.)

With regard to the cases at bar, Circuit Judge Healy of the Court below declared (IR. 46):

> "the injured men appear to have suffered a disability of greater or less extent from the outset. Two of them, at least, as the Commissioner found, had to be put on lighter work, and all of them confessedly continued from the time of injury to suffer pain and discomfort from it. It is true they lost no time, or none in excess of seven days anyway, and were paid their old wage, but those facts alone do not spell absence of disability for which an award may be made. See *Twin Harbor Stevedoring & Tug Co. v. Marshall*, 9 Cir., 103 F. 2d 513, where this Court sustained an award under like circumstances, saying that wages received by a worker who has suffered an injury are not conclusive and that ability to earn is the test."

The Court of Appeals, however, in affirming the District Court's decision annulling the petitioners' awards, reached its conclusion through a different basis:

> "But we do not, as the trial Court did, rest decision on the *Twin Harbor* holding. What the Commissioner's argument really amounts to is that the statute begins to run, not from the date of the injury, but from the date of disability. The view appears irreconcilable with the plain terms of the Act. The argument necessarily assumes that the terms 'injury' and 'disabilty' are interchangeable. However, as we pointed out in

> *Kobilkin v. Pillsbury*, 103 F. 2d 667, 669, the terms are separately defined in the statute and are not synonymous. Section 2(2) states that when used in the Act 'the term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury * * *.' In the same section (subdivision 10) 'disability' is defined as meaning 'incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or other employment.'" (R. 46-47.)

A fair and accurate statement of the law, therefore, is, that where a specific trauma occurs, as distinguished from occupational disease, the *injury* is "inflicted at the time of the accident, not when its full extent" is first noted at some later time, and that the phrase in Section 13(a), "one year after the injury," means just that and it does not mean five or ten years, or an unlimited number of years, after the injury, as urged. The sheer absurdity of the position taken by petitioners is exemplified when it is broken down into the following categories:

(a) An injured workman who has suffered 8 days of disability and has received compensation for 1 day is barred from recovery of further compensation unless a claim is filed within one year.

(b) An injured workman who has suffered 7 days of disability and has received no compensa-

tion has *forever* within which time to file his claim.

No such incongruous intention can be seriously imputed to Congress.

This Court's consideration and affirmance of the lower Court's holding in the *Kobilkin* case, is the law of the land; consequently none of the cases cited by petitioners can be taken as an adequate basis for reversal of the lower Court's decision in the cases at bar. The *Kobilkin* case is controlling.

CONCLUSION.

From the foregoing, it is respectfully submitted that the lower Court's opinion in favor of Respondents should be affirmed.

Dated, San Francisco, California,
November 28, 1951.

LYMAN HENRY,
Proctor for Respondents.

JOHN H. BLACK,
EDWARD R. KAY,
Of Counsel for Respondents.

(Appendices A, B and C Follow.)

Appendices.

Appendix A

The relevant provisions of the Longshoremen's and Harbor Workers' Compensation Act (c. 509, 44 Stat. 1424, 33 U. S. C., Secs. 901 *et seq.*) are as follows:

SEC. 2. When used in this Act—

* * * * * * *

(2) The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

* * * * * * *

(10) "Disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.

(11) "Death" as a basis for a right to compensation means only death resulting from an injury.

(12) "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this Act, and includes funeral benefits provided therein.

* * * * * * *

SEC. 3. (a) Compensation shall be payable under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or

death through workmen's compensation proceedings may not validly be provided by State law.

* * * * * * *

SEC. 4. (b) Compensation shall be payable irrespective of fault as a cause for the injury.

* * * * * * *

SEC. 6. (a) No compensation shall be allowed for the first seven days of the disability, except the benefits provided for in section 7: *Provided, however,* That in case the injury results in disability of more than forty-nine days, the compensation shall be allowed from the date of the disability.

* * * * * * *

SEC. 7. (a) The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for such period as the nature of the injury or the process of recovery may require. * * *

* * * * * * *

SEC. 8. Compensation for disability shall be paid to the employee as follows:

(a) Permanent total disability: In case of total disability adjudged to be permanent 66⅔ per centum of the average weekly wages shall be paid to the employee during the continuance of such total disability. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

(b) Temporary total disability: In case of disability total in character but temporary in

quality 66⅔ per centum of the average weekly wages shall be paid to the employee during the continuance thereof.

(c) Permanent partial disability: In case of disability partial in character but permanent in quality, the compensation shall be 66⅔ per centum of the average weekly wages, which shall be in addition to compensation for temporary total disability or temporary partial disability paid in accordance with subdivision (b) or subdivision (e) of this section respectively, and shall be paid to the employee, as follows:

* * * * * * *

(18) Total loss of use: Compensation for permanent total loss of use of a member shall be the same as for loss of the member.

(19) Partial loss or partial loss of use: Compensation for permanent partial loss of use of a member may be for proportionate loss or loss of use of the member.

(30) Disfigurement: The deputy commissioner shall award proper and equitable compensation for serious facial or head disfigurement, not to exceed $3,500.

(21) Other cases: In all other cases in this class of disability the compensation shall be 66⅔ per centum of the difference between his average weekly wages and his wage earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideration of the degree of such impairment by the deputy commissioner on his own motion or upon application of any party in interest.

(22) In any case in which there shall be a loss of, or loss of use of, more than one member

or parts of more than one member set forth in paragraphs (1) to (19) of this subdivision, not amounting to permanent total disability, the award of compensation shall be for the loss of, or loss of use of, each such member or part thereof, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, paragraph (17) of this subdivision shall apply.

* * * * * * *

(e) Temporary partial disability: In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be two-thirds of the difference between the injured employee's average weekly wages before the injury and his wage-earning capacity after the injury in the same or another employment, to be paid during the continuance of such disability, but shall not be paid for a period exceeding five years.

(f) Injury increasing disability: (1) If an employee receive an injury which of itself would only cause permanent partial disability, but which, combined with a previous disability, does in fact cause permanent total disability, the employer shall provide compensation only for the disability caused by the subsequent injury: *Provided, however,* That in addition to compensation for such permanent partial disability, and after the cessation of the payments for the prescribed period of weeks, the employee shall be paid the remainder of the compensation that would be due for permanent total disability. Such additional compensation shall be paid out of the special fund established in section 44 [33 U. S. Code 944].

* * * * * * *

APPENDIX B-1

Form CB-626 B
Revised December 31, 1941

United States of America

UNITED STATES EMPLOYEES' COMPENSATION COMMISSION

In the matter of the claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act.

WILLIAM FARMER,
Claimant.

against

MATSON TERMINALS, INC.,
Employer.

EMPLOYER'S FIRE INSURANCE CO.,
Carrier.

Case No. 726-402
Claim No. 2614
NOTICE OF HEARING
Injury of 3-29-45

To Mr. William Farmer,
1645 Leavenworth St.,
San Francisco, Calif.

To Matson Terminals, Inc.,
Attn: Mr. R. J. Kelly,
To 215 Market St.,
San Francisco, Calif.
To

To

You are hereby notified that upon application made by claimant, an interested party in the above-entitled claim, a hearing on such claim is hereby ordered, to be held before WARREN H. PILLSBURY, Deputy Commissioner 13th Compensation District of the United States Employees' Compensation Commission, at ROOM 310, 417 MARKET STREET, in the City of SAN FRANCISCO, CALIFORNIA, on the MONDAY, the 17th day of JUNE, 1946, at 10 o'clock a. m. of that day.

To show employee's claim for compensation filed to stop the running of the Statute of Limitations.
(SEE ATTACHED LETTER)

In testimony whereof, the undersigned, a Deputy Commissioner of the United States Employees' Compensation Commission, has hereunto set his hand at San Francisco, California, this 7th day of June, 1946

Warren H. Pillsbury
Deputy Commissioner.
13th *Compensation District.*

Form USE-211A

UNITED STATES EMPLOYEES' COMPENSATION COMMISSION

Office of Deputy Commissioner WARREN H. PILLSBURY

Administering Longshoremen's and Harbor Workers' Compensation Act

LEAVE THIS SPACE BLANK

Case No. 716-409

Insurance Carrier's No. _____

June 5, 1946

NOTICE TO EMPLOYER AND INSURANCE CARRIER THAT CLAIM HAS BEEN FILED

Gentlemen:

There is enclosed copy of a claim for compensation which has been filed by claimant, William Fazande

You should proceed to pay compensation promptly when due as provided by Section 14 of the Longshoremen's and Harbor Workers' Compensation Act and to furnish medical treatment in accordance with Section 7(a) thereof, unless liability to pay compensation is controverted.

Section 14(d) provides that if the employer controverts the right to compensation he shall file with the deputy commissioner, on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted.

Under the Commission's regulations where claim is filed the employer or insurance carrier, within 10 days from the date notice is received that claim has been filed, is required to file answer thereto.

[redacted] answer is enclosed for use in the event the right to compensation is controverted and the claim is to be opposed.

The original notice and answer should be filed with the deputy commissioner at the above address and copy thereof served upon the claimant either personally or by mailing it to the address given in the claim if you deny liability, otherwise you should proceed to pay compensation immediately as provided by the said Act and not require the claimant, as well as yourself, needlessly to incur the expenses incidental to a hearing before the deputy commissioner.

Very truly yours,

Warren H. Pillsbury

Deputy Commissioner.

pr

Form US-208

Budget Bureau No. 72-R012.
Approval expires 3-30-42.

LEAVE THIS SPACE BLANK

Case No. 736-409

Insurance Carrier's No. 82

UNITED STATES EMPLOYEES' COMPENSATION COMMISSION

Office of Deputy Commissioner WARREN H. PILLSBURY

Administering Longshoremen's and Harbor Workers' Compensation Act

EMPLOYER'S CLAIM FOR COMPENSATION

(To be filed with the Deputy Commissioner in accordance with sections 13 and 19 of the law)

INJURED PERSON

1. Name of employee [redacted] FAZANDE Employee's check No. 44,247
2. Address: Street and No. 1445 Leavenworth City or town San Francisco, Calif.
3. Sex Male Age 36 Married, single, widowed Married
4. Do you speak English? Yes Nationality American
5. State regular occupation Longshoreman
6. What were you doing when injured? Longshoreman
7. (a) Wages or average earnings per day, $ (Include overtime, board, rent, and other allowances.) (b) Per week, $ 30.00 (c) Were you employed elsewhere during week in which you were injured? No. (d) If so, state where and when
8. Were you paid full wages for day of accident? Yes

EMPLOYER

9. Employer? Matson Terminals, Inc.
10. Office address: Street and No. 215 Market St. City or town San Francisco, Calif
11. Nature of business Stevedoring and Terminal Operations

THE INJURY

12. Place where injury occurred Greenwich, on SS HAMLIN (Give name and name of vessel)
13. Name of foreman Robert Reyes
14. Date of accident or first illness, the 29th day of May, 1945, at o'clock M.
15. How did accident happen or how was occupational disease caused? Stepped off end of ladder into hatch opening, and fell, landing on a shovel.

NATURE AND EXTENT OF INJURY

16. State fully nature of injury or occupational disease: Bone smashed and ligaments in chest.
17. On what date did you stop work because of injury? May 29, 1945
18. Have you returned to work? (Yes or No) Yes If "yes," on what date? June 12, 1945
19. Does injury keep you from work? (Yes or No) No
20. Have you done any work in period of disability? No.
21. Have you received any wages since injury? Yes If so, from and to what date? Since return to work, have received wages continuously.
22. Has injury resulted in amputation? No. If so, describe same
23. Did you request your employer to provide medical attendance? Yes Has he done so? Yes
24. Attending physician: Name Dr. Delgrot Address San Francisco, Calif.
25. Hospital: Name St. Luke's Hospital Address San Francisco, California

NOTICE

26. Have you given your employer notice of injury? (Yes or No) Yes When? May 29, 1945
27. If such notice was given, to whom? to foreman
28. Was it given orally or in writing? Orally

I hereby present my claim to the Deputy Commissioner for compensation for disability resulting from an injury arising out of and in the course of my employment and not occasioned solely by intoxication, or by my willful intention, and in support of it I make the foregoing statement of facts.

Signed by William Fazande
Claimant.

Dated May 22, 1945 Mail address 1445 Leavenworth, San Francisco, Calif.

10-42509-2

Form US-204 B
Revised December 31, 1941

APPENDIX B-2

United States of America

FEDERAL SECURITY AGENCY, BUREAU OF EMPLOYEES' COMPENSATION

	J. H. B.	
	E. R. K.	
	H. W. S.	
	J. A. G.	
	R. L. F.	
	R. C. T.	
	M. J. M.	

IN THE MATTER OF THE CLAIM FOR COMPENSATION UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT.

FRED W. HOOPER,
Claimant.

against

MATSON NAVIGATION COMPANY,
Employer.

FIREMAN'S FUND INSURANCE COMPANY,
Carrier.

Case No. 1-3452
Claim No. 3375
NOTICE OF HEARING
Injury of 12-12-48

RECORDED
FEB 27 50

(R) To Mr. Fred W. Hooper
2321 Van Ness Avenue
San Francisco, California

(R) To Matson Navigation Co.,
215 Market St.,
To San Francisco, California

(R) To Fireman's Fund Insurance Co.,
Attn: Mr. E. H. Kay, Attorney at Law
To 233 Sansome Street
San Francisco, California

You are hereby notified that upon application made by claimant, an interested party in the above-entitled claim, a hearing on such claim is hereby ordered, to be held before WARREN H. PILLSBURY, Deputy Commissioner 13 Compensation District of the Federal Security Agency, Bureau of Employees' Compensation, at ROOM 126, 630 SANSOME STREET, in the City of SAN FRANCISCO, CALIFORNIA, on THE FRIDAY, the 10th day of MARCH, 1950, at 10 o'clock a.m. of that day.

US-203, employee's claim for compensation, filed to protect the running of the Statute of Limitations.

SEE ATTACHED LETTER

In testimony whereof, the undersigned, a Deputy Commissioner of the Federal Security Agency, Bureau of Employees' Compensation, has hereunto set his hand at San Francisco, California this 24th day of February 1950

Warren H. Pillsbury
Deputy Commissioner.
Compensation District.
19th

10-601-9

Form USB-215A
FEDERAL SECURITY AGENCY
Bureau of Employees' Compensation

Office of Deputy Commissioner WARREN H. PILLSBURY

Administering Longshoremen's and Harbor Workers' Compensation Act

LEAVE THIS SPACE BLANK

Case No. 1-3452

Insurance Carrier's No.

February 24, 1950

NOTICE TO EMPLOYER AND INSURANCE CARRIER THAT CLAIM HAS BEEN FILED

Gentlemen:

There is enclosed copy of a claim for compensation which has been filed by claimant, Fred W. Hooper

You should proceed to pay compensation promptly when due as provided by Section 14 of the Longshoremen's and Harbor Workers' Compensation Act and to furnish medical treatment in accordance with Section 7(a) thereof, unless liability to pay compensation is controverted.

Section 14(d) provides that if the employer controverts the right to compensation he shall file with the deputy commissioner, on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted.

Under the Bureau's regulations where claim is filed the employer or insurance carrier, within 10 days from the date notice is received that claim has been filed, is required to file answer thereto.

[redacted] Answer is enclosed for use in the event the right to compensation is controverted and the claim is to be opposed.

The original notice and answer should be filed with the deputy commissioner at the above address and copy thereof served upon the claimant either personally or by mailing it to the address given in the claim if you deny liability, otherwise you should proceed to pay compensation immediately as provided by the said Act and not require the claimant, as well as yourself, needlessly to incur the expenses incidental to a hearing before the deputy commissioner.

Very truly yours,

Warren H. Pillsbury

Deputy Commissioner.

FEDERAL SECURITY AGENCY
BUREAU OF EMPLOYEES' COMPENSATION
Warren H. Pillsbury, Deputy Commissioner
Thirteenth District
Room 576, Appraisers Building
[illegible] Sansome Street
San [illegible], California

pr

Form US-538

Form Approved
Budget Bureau No. 70-R012.1

FEDERAL SECURITY AGENCY
BUREAU OF EMPLOYEES' COMPENSATION

Office of Deputy Commissioner Fifteenth Compensation District

Administering Longshoremen's and Harbor Workers' Compensation Act

LEAVE THIS SPACE BLANK

CASE No. 1-352

INSURANCE CARRIER'S No. .....

EMPLOYEE'S CLAIM FOR COMPENSATION

(To be filed with the Deputy Commissioner in accordance with sections 13 and 19 of the law)

INJURED PERSON

1. Name of employee Fred W. Hooper Employee's check No. .....
2. Address: Street and No. 521 Van Ness Ave. City or town San Francisco, Calif.
3. Sex Male Age 36 Married, single, widowed Single
4. Do you speak English? Yes Nationality .....
5. State regular occupation Engine Engineer
6. What were you doing when injured? Relief Engineer SS Lahaina
7. (a) Wages or average earnings per day, $ 12.50 (Include overtime, board, rent, and other allowances.) (b) Per week, $ ..... (c) Were you employed elsewhere during week in which you were injured? ..... (d) If so, state where and when .....
8. Were you paid full wages for day of accident? Yes

EMPLOYER

9. Employer Matson Navigation Company
10. Office address: Street and No. 215 Market St., City or town San Francisco, Calif.
11. Nature of business Ocean Transportation

THE INJURY

12. Place where injury occurred Aboard SS Matsonia, Pier 29, San Francisco, Calif.
13. Name of foreman Chief Engr. George R. Crandall
14. Date of accident or first illness, the 12th day of September, 194 8, at ..... o'clock A M.
15. How did accident happen or how was occupational disease caused? Caught right foot in control gear, water tight door, maneuvering platform, engine room.

NATURE AND EXTENT OF INJURY

16. State fully nature of injury or occupational disease: Contusion right foot
17. On what date did you stop work because of injury? 12/14/48, 194
18. Have you returned to work? (Yes or No) Yes If yes, on what date? ....., 194
19. Does injury keep you from work? (Yes or No) No
20. Have you done any work in period of disability? No
21. Have you received any wages since injury? Yes If so, from and to what date? .....
22. Has injury resulted in amputation? No If so, describe same .....
23. Did you request your employer to provide medical attendance? No Has he done so? .....
24. Attending physician: Name ..... Address .....
25. Hospital: Name U.S. Marine Hospital Address San Francisco, Calif.

NOTICE

26. Have you given your employer notice of injury? (Yes or No) Yes When? 12/15/48, 194
27. If such notice was given, to whom? .....
28. Was it given orally or in writing? Orally

I hereby present my claim to the Deputy Commissioner for compensation for disability resulting from an injury arising out of and in the course of my employment and not occasioned solely by intoxication, or by my willful intention, and in support of it I make the foregoing statement of facts.

Signed by Fred W. Hooper
Claimant.

Dated February 2, 1950, 194 Mail address 521 Van Ness Ave., San Francisco, Calif.

FEDERAL SECURITY AGENCY
BUREAU OF EMPLOYEES' COMPENSATION
LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT
THIRTEENTH COMPENSATION DISTRICT
ROOM 126, 630 SANSOME STREET
SAN FRANCISCO 11, CALIFORNIA

February 24, 1950

ADDRESS REPLIES TO:
THE DEPUTY COMMISSIONER

REFER TO FILE NO.

Mr. Fred W. Hooper
2521 Van Ness Avenue
San Francisco,
California

Matson Navigation Co.,
215 Market Street
San Francisco,
California

Firemen's Fund Insurance Co.,
Attn: Mr. E. H. Kay, Attorney at Law
233 Sansome Street
San Francisco,
California

Re: Fred W. Hooper, 1-3452
Matson Navigation Company
Injury of 12-12-48

Gentlemen:

Please be advised that the hearing in the above case now set for Friday, March 10th, 1950 at 10:00 a.m., at Room 126, 630 Sansome Street, San Francisco, California, HAS BEEN POSTPONED INDEFINITELY pending return of injured person to port and surgery as recommended.

Yours very truly,

Warren H. Pillsbury

Warren H. Pillsbury
Deputy Commissioner
13th Compensation District

pr

APPENDIX B-3

Form LS-264 B
Revised December 22, 1941

United States of America

U. S. DEPARTMENT OF LABOR, BUREAU OF EMPLOYEES' COMPENSATION

	J H B	
	E R K	
	H W S	
	J A G	
	R L P	
	K G I	
	M J M	

IN THE MATTER OF THE CLAIM FOR COMPENSATION UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT.

William T. Crawford, *Claimant.*

against

United Engineering Company, *Employer.*

Fireman's Fund Ins. Co., *Carrier.*

Case No. 1366-1049 PRE-HEARING CONF. OR

NOTICE OF HEARING C1-3547

Inj: 9/16/47

To Mr. William T. Crawford, 1153 Divisadero Street, San Francisco, California

TO: United Engineering Company, 215 Market Street, San Francisco, California

To Fireman's Fund Insurance Company, c/o Mr. Gaughran, Attorney, 233 Sansome Street San Francisco, California

To Mr. Henry C. Sanford, Attorneys, 714 Mobart Building, San Francisco 4, Calif.

To

To

You are hereby notified that upon application made by William T. Crawford, an interested party in the above-entitled claim, a hearing on such claim is hereby ordered, to be held before Warren H. Pillsbury, Deputy Commissioner 13th Compensation District of the U. S. Department of Labor, Bureau of Employees' Compensation, at Room 126, 630 Sansome Street in the City of San Francisco, California on the FRIDAY, 30th day of March, 19 51, at 9:00 o'clock a. m. of that day.

This prehearing conference or hearing is set on the initiative of the Deputy Commissioner

PLEASE NOTE: Statute of limitations may run March 30, 1951.

Calendar
Filed
Ace Reporter
Reporter
sep

In testimony whereof, the undersigned, a Deputy Commissioner of the U. S. Department of Labor, Bureau of Employees' Compensation, has hereunto set his hand at San Francisco, California this 21st day of March, 19 51

13th *Deputy Commissioner. Compensation District.*

16—561-9

Form US-208

Budget Bureau No. 72-R003.
Approval expires 2-28-48.

FEDERAL SECURITY AGENCY
BUREAU OF EMPLOYEES' COMPENSATION

Office of Deputy Commissioner W. H. PILLSBURY

Administering Longshoremen's and Harbor Workers' Compensation Act

LEAVE THIS SPACE BLANK

CASE NO. .....

INSURANCE CARRIER'S NO. .....

EMPLOYER'S CLAIM FOR COMPENSATION

(To be filed with the Deputy Commissioner in accordance with sections 13 and 19 of the law)

INJURED PERSON

1. Name of employee WM. H. T. CRAWFORD Employee's check No. .....
2. Address: Street and No. 1153 Divisadero St City or town San Francisco
3. Sex MALE Age 43 Married, single, widowed Married
4. Do you speak English? Yes Nationality Brazilian
5. State regular occupation Marine electrician
6. What were you doing when injured? Repair work, conversion work
7. (a) Wages or average earnings per day, $ Max (Include overtime, board, rent, and other allowances.) (b) Per week, $ ..... (c) Were you employed elsewhere during week in which you were injured? No (d) If so, state where and when .....
8. Were you paid full wages for day of accident? Don't think so

EMPLOYER

9. Employer United Engineering Co.
10. Office address: Street and No. 215 Market St. City or town San Francisco
11. Nature of business Ship repair

THE INJURY

12. Place where injury occurred Pier 16 Monadnock (Cavalier) (Give place and name of vessel)
13. Name of foreman .....
14. Date of accident or first illness, the 16th day of Sept., 1947 at 10 o'clock A. M.
15. How did accident happen or how was occupational disease caused? Fell from main deck into engine room and injured back

NATURE AND EXTENT OF INJURY

16. State fully nature of injury or occupational disease: Injury to back
17. On what date did you stop work because of injury? September 16, 1947
18. Have you returned to work? (Yes or No) Yes If "yes," on what date? can't remember
19. Does injury keep you from work? (Yes or No) Yes 3 times at work
20. Have you done any work in period of disability? Yes (music) test
21. Have you received any wages since injury? Yes If so, from and to what date? November 7, 1950 to February 3, 1951
22. Has injury resulted in amputation? No If so, describe same .....
23. Did you request your employer to provide medical attendance? Yes Has he done so? Yes
24. Attending physician: Name Dr. Delprat Address 304 Post St.
25. Hospital: Name St Luke's Hospital Address San Francisco

NOTICE

26. Have you given your employer notice of injury? (Yes or No) Yes When? ....., 194..
27. If such notice was given, to whom? Foreman
28. Was it given orally or in writing? Orally

I hereby present my claim to the Deputy Commissioner for compensation for disability resulting from an injury arising out of and in the course of my employment and not occasioned solely by intoxication, or by my willful intention, and in support of it I make the foregoing statement of facts.

Signed by WM. H. T. CRAWFORD Claimant.

Dated April 6, 1951 Mail address 1153 Divisadero St., San Francisco

APPENDIX B-4

Form US-210 B
Revised December 15, 1941

United States of America

U. S. DEPARTMENT OF LABOR, BUREAU OF EMPLOYEES' COMPENSATION

IN THE MATTER OF THE CLAIM FOR COMPENSATION UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT.

Jess I. Armenta
Claimant.

against

Arrow Stevedore Company
Employer.

Fireman's Fund Insurance Company
Carrier.

Case No. 2208-180

NOTICE OF HEARING

Ind. 8/28/50

C1-3650

To Mr. Jess I. Armenta, 235 E. Johnson Street, Compton, California

To Arrow Stevedore Company, Berth 179, Wilmington, California

To Fireman's Fund Insurance Company, Citizens Bank Building, Attention: Mr. Murray H. Roberts, Attorney, Wilmington, California

To Fireman's Fund Insurance Company, 233 Sansome Street, San Francisco, California

To Mr. Joseph Loudan, Vice Pres., ILWU, Local 13, 234 Broad Avenue, Wilmington, California

To

You are hereby notified that upon application made by Jess I. Armenta, an interested party in the above-entitled claim, a hearing on such claim is hereby ordered, to be held before Warren H. Pillsbury

Deputy Commissioner 13th Compensation District of the U. S. Department of Labor, Bureau of Employees' Compensation, at ~~THE CONFERENCE ROOM, LONGSHOREMEN'S DISPATCHING~~ in the City of WILMINGTON, CALIFORNIA on the ~~IT~~ TUESDAY, 19th day of SEPTEMBER, 1950, at 10:30 o'clock a. m. of that day.

US-203, US-215, US-215A served on the parties with this notice

one SEE ATTACHED LETTER POSTPONING HEARINGS

Calendar
Filed
eap

In testimony whereof, the undersigned, a Deputy Commissioner of the U. S. Department of Labor, Bureau of Employees' Compensation, has hereunto set his hand at San Francisco, California this 29th day of August, 19

Warren H. Pillsbury
Deputy Commissioner.
13th *Compensation District.*

B-401-6

U. S. DEPARTMENT OF LABOR

BUREAU OF EMPLOYEES' COMPENSATION
LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT
THIRTEENTH COMPENSATION DISTRICT
ROOM 130, 630 SANSOME STREET
SAN FRANCISCO 11, CALIFORNIA

ADDRESS REPLIES TO
THE DEPUTY COMMISSIONER

August 29, 1951

REFER TO FILE NO.

Mr. Jose I. Armenta
235 E. Johnson Street
Compton, California

Arrow Stevedore Company
Berth 179
Wilmington, California

Fireman's Fund Insurance Company
Citizens Bank Building
Wilmington, California
Attention: Mr. Murray H. Roberts, Attorney

Fireman's Fund Insurance Company
233 Sansome Street
San Francisco, California

Mr. Joseph London, Vice President
ILWU, Local 13
234 Broad Avenue
Wilmington, California

Re: Jose I. Armenta, 2201-180
Arrow Stevedore Company
Inj: 8/28/50

Gentlemen:

Please be advised that the hearing now set for Tuesday, September 18, 1951 at 10:30 A.M. at the Conference Room, Longshoreman's Dispatching Hall, Wilmington, California, HAS BEEN POSTPONED INDEFINITELY.

Parties need not appear.

Yours very truly,

Warren H. Pillsbury

Warren H. Pillsbury
Deputy Commissioner
13th Compensation District

WHP:ccp:sh

Form USB-206 B
Revised December 31, 1947

APPENDIX B-5

United States of America

FEDERAL SECURITY AGENCY, BUREAU OF EMPLOYEES' COMPENSATION

FEDERAL SECURITY AGENCY
BUREAU OF EMPLOYEES' COMPENSATION
Warren H. Pillsbury, Deputy Commissioner
Thirteenth District
Room 126, Appraisers Building
630 Sansome Street
San Francisco 11, California

IN THE MATTER OF THE CLAIM FOR COMPENSATION UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT.

LEE BRADA,
Claimant.

against

ARROW STEVEDORE COMPANY,
Employer.

FIREMAN'S FUND INSURANCE CO.,
Carrier.

Case No. 2201-120
Claim No. 3399
NOTICE OF HEARING
Injury of 4-10-49

(R) To Mr. Lee Brada
2761 Ninth St.,
San Francisco, California

Mr. Julius Stern
ILWU., Local #10
Pier 18 North
San Francisco, California

(R) To Arrow Stevedoring Co.,
310 Sansome Street
To San Francisco, California

RECORDED

(R) To Fireman's Fund Insurance Co.,
Attn: Mr. E. R. Kay, Attorney at Law
To 233 Sansome St.,
San Francisco, California

You are hereby notified that upon application made by claimant

, an interested party in the above-entitled claim, a hearing on such claim is hereby ordered, to be held before WARREN H. PILLSBURY

Deputy Commissioner 13th Compensation District of the Federal Security Agency, Bureau of Employees' Compensation, at ROOM 126, 630 SANSOME STREET,

in the City of SAN FRANCISCO, CALIFORNIA, on THE THURSDAY, the 18th day of MAY, 1950, at 10:00 o'clock A. m. of that day.

Purpose: US-203, employee's claim for compensation, filed to protect the running of the Statute of Limitations.

(SEE ATTACHED LETTER)

In testimony whereof, the undersigned, a Deputy Commissioner of the Federal Security Agency, Bureau of Employees' Compensation, has hereunto set his hand at San Francisco, California,

this 4th day of May, 1950.

Calendar
Reporter
pr

Warren H. Pillsbury
Deputy Commissioner.
13th *Compensation District.*

16-601-2

Form US-215A
FEDERAL SECURITY AGENCY
Bureau of Employees' Compensation

Office of Deputy Commissioner WARREN H. PILLSBURY
Administering Longshoremen's and Harbor Workers' Compensation Act

LEAVE THIS SPACE BLANK

Case No. 2201-120

Insurance Carrier's No. .....

May 8, 1950

NOTICE TO EMPLOYER AND INSURANCE CARRIER THAT CLAIM HAS BEEN FILED

Gentlemen:

There is enclosed copy of a claim for compensation which has been filed by claimant, Lee Breda

You should proceed to pay compensation promptly when due as provided by Section 14 of the Longshoremen's and Harbor Workers' Compensation Act and to furnish medical treatment in accordance with Section 7(a) thereof, unless liability to pay compensation is controverted.

Section 14(d) provides that if the employer controverts the right to compensation he shall file with the deputy commissioner, on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted.

Under the Bureau's regulations where claim is filed the employer or insurance carrier, within 10 days from the date notice is received that claim has been filed, is required to file answer thereto.

[redacted] answer, is enclosed for use in the event the right to compensation is controverted and the claim is to be opposed.

The original notice and answer should be filed with the deputy commissioner at the above address and copy thereof served upon the claimant either personally or by mailing it to the address given in the claim if you deny liability, otherwise you should proceed to pay compensation immediately as provided by the said Act and not require the claimant, as well as yourself, needlessly to incur the expenses incidental to a hearing before the deputy commissioner.

Very truly yours,

Warren H. Pillsbury

Deputy Commissioner.

FEDERAL SECURITY AGENCY
BUREAU OF EMPLOYEES' COMPENSATION
Warren H. Pillsbury, Deputy Commissioner
Thirteenth District
Room 126, Appraisers Building
630 Sansome Street
San Francisco 11, California

U. S. GOVERNMENT PRINTING OFFICE 16—87457-8

pr

Form US-203

Form Approved
Budget Bureau No. 79-R013.1

FEDERAL SECURITY AGENCY
BUREAU OF EMPLOYEES' COMPENSATION

Office of Deputy Commissioner WARREN H. PILLSBURY

Administering Longshoremen's and Harbor Workers' Compensation Act

LEAVE THIS SPACE BLANK

CASE NO. 2201-120

INSURANCE CARRIER'S NO.

EMPLOYEE'S CLAIM FOR COMPENSATION

(To be filed with the Deputy Commissioner in accordance with sections 13 and 19 of the law)

INJURED PERSON

1. Name of employee Lee B. Breda — Employee's check No. 64859
2. Address: Street and No. 2781 Bush St., — City or town San Francisco, Calif.
3. Sex M — Age 52 — Married, single, widowed Married
4. Do you speak English? Yes — Nationality
5. State regular occupation Longshoreman
6. What were you doing when injured? working aboard ship
7. (a) Wages or average earnings per day, $ max. (Include overtime, board, rent, and other allowances.) (b) Per week, $ max. (c) Were you employed elsewhere during week in which you were injured? no (d) If so, state where and when
8. Were you paid full wages for day of accident? yes

EMPLOYER

9. Employer Arrow Stevedoring Company
10. Office address: Street and No. 310 Sansome St., — City or town San Francisco
11. Nature of business Stevedoring company

THE INJURY

12. Place where injury occurred "S. S. GATEWAY CITY" - Howards Terminal, Oakland (Give place and name of vessel)
13. Name of foreman A. Graham
14. Date of accident or first illness, the 10th day of April, 1949, at 8:00 o'clock P. M.
15. How did accident happen or how was occupational disease caused? While placing roller beams in the shelter deck, I became over balanced and fell in the hatch

NATURE AND EXTENT OF INJURY

16. State fully nature of injury or occupational disease: Injury to both ankles and right knee
17. On what date did you stop work because of injury? April 10, 1949
18. Have you returned to work? (Yes or No) Yes — If "yes," on what date? May 16, 1949
19. Does injury keep you from work? (Yes or No) no
20. Have you done any work in period of disability? yes
21. Have you received any wages since injury? yes — If so, from and to what date? May 16, 1949
22. Has injury resulted in amputation? no — If so, describe same
23. Did you request your employer to provide medical attendance? yes — Has he done so? yes
24. Attending physician: Name Dr. Mensor Shumate — Address 490 Post St., S.F.
25. Hospital: Name none — Address

NOTICE

26. Have you given your employer notice of injury? (Yes or No) yes — When? April 10, 1949
27. If such notice was given, to whom? walking boss
28. Was it given orally or in writing? written by gang foreman

I hereby present my claim to the Deputy Commissioner for compensation for disability resulting from an injury arising out of and in the course of my employment and not occasioned solely by intoxication, or by my willful intention, and in support of it I make the foregoing statement of facts.

Signed by Lee Breda
Claimant.

Dated May 2, 1950

Mail address 2781 Bush St., San Francisco, Calif.

copy - pr

U. S. GOVERNMENT PRINTING OFFICE 16-41040-3

FEDERAL SECURITY AGENCY

BUREAU OF EMPLOYEES' COMPENSATION
LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT
THIRTEENTH COMPENSATION DISTRICT
ROOM 126, 630 SANSOME STREET
SAN FRANCISCO 11, CALIFORNIA

May 8, 1950.

ADDRESS REPLIES TO:
THE DEPUTY COMMISSIONER

REFER TO FILE NO.

Mr. Lee Breda
2781 Bush Street
San Francisco, California

Arrow Stevedore Co.,
310 Sansome Street
San Francisco, California

Fireman's Fund Insurance Co.,
Attn: Mr. E. R. Kay, Attorney at Law
233 Sansome St.,
San Francisco, California

Mr. Julius Stern
ILWU., Local #10
Pier 18 North
San Francisco, California

Re: Lee Breda, 2201-120
Arrow Stevedoring Company
Injury of 4-10-49

Gentlemen:

Please be advised that the hearing in the above case now set for Thursday, May 18th, 1950 at 10:00 a.m., at Room 126, 630 Sansome Street, San Francisco, California, HAS BEEN POST-PONED INDEFINITELY.

Yours very truly,

Warren H. Pillsbury

Warren H. Pillsbury
Deputy Commissioner
13th Compensation District

pr

APPENDIX B-6

Form US-224 B
Revised December 23, 1941

United States of America

U. S. DEPARTMENT OF LABOR, BUREAU OF EMPLOYEES' COMPENSATION

IN THE MATTER OF THE CLAIM FOR COMPENSATION UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT.

John B. Page *Claimant.*

against

Jones Stevedoring Co. *Employer.*

Fireman's Fund Ins. Co. *Carrier.*

Case No. 195-452 el-3024

NOTICE OF HEARING

Inj: 9/16/50

To Mr. John B. Page, 1203 Orizaba, Long Beach, California

TO: Jones Stevedoring Company, Pier A, Berth 5, Long Beach, California

To Fireman's Fund Insurance Company, Citizens Bank Building, Attention: Mr. Murray H. Roberts, Attorney, Wilmington, California

To Fireman's Fund Insurance Company, 233 Sansome Street, San Francisco, Calif.

To Mr. Joseph Logan, Vice President, ILWU, Local 13, 234 Broad Avenue, Wilmington, California

To

You are hereby notified that upon application made by John B. Page, an interested party in the above-entitled claim, a hearing on such claim is hereby ordered, to be held before Warren H. Pillsbury, Deputy Commissioner 13th Compensation District of the U. S. Department of Labor, Bureau of Employees' Compensation, at the conference room, Longshoreman's Dispatching Hall, 343 BROAD AVENUE, WILMINGTON, CALIFORNIA in the City of on the Tuesday, 7th day of August, 1951, at 10:00 o'clock A. m. of that day.

U.S. 203, U. S. 215, and US-215A served on the parties with this notice.

See attached letter continuing hearing. Formal claim filed to toll the statute of limitations.

In testimony whereof, the undersigned, a Deputy Commissioner of the U. S. Department of Labor, Bureau of Employees' Compensation, has hereunto set his hand at San Francisco, California this 23rd day of July, 1951

Calendar
Filed
cop

Warren H. Pillsbury
Deputy Commissioner.
13th *Compensation District.*

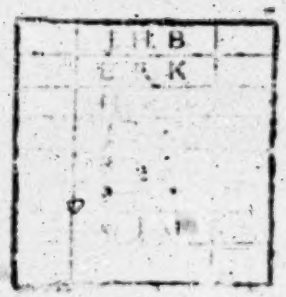
FEDERAL SECURITY AGENCY
BUREAU OF EMPLOYEES' COMPENSATION
LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT
THIRTEENTH COMPENSATION DISTRICT
ROOM 138, 630 SANSOME STREET
SAN FRANCISCO 11, CALIFORNIA

July 23, 1951

ADDRESS REPLIES TO:
THE DEPUTY COMMISSIONER

REFER TO FILE NO.

Mr. John B. Page
1103 Orizaba
Long Beach, California



Jones Stevedoring Company
Pier A, Berth 5
Long Beach, California

Firemen's Fund Insurance Company
Citizens Bank Building
Attention: Mr. Murray W. Roberts, Attorney
Wilmington, California

Firemen's Fund Insurance Company
233 Sansome Street
San Francisco, California

Mr. Joseph London, Vice President
ILWU, Local 13, 234 Broad Avenue
Wilmington, California

Re: John B. Page, 195-452
Jones Stevedoring Co.
Inj: 9/16/50

Gentlemen:

Please be advised that the hearing now set for Tuesday, August 7, 1951 at 10:00 A.M. at the Conference Room, Longshoremen's Dispatching Hall, 234 Broad Avenue, Wilmington, California, has been postponed indefinitely.

Parties need not appear.

Yours very truly,

Warren H. Pillsbury

Warren H. Pillsbury
Deputy Commissioner
13th Compensation District

WHP:eep

APPENDIX B-7

Form US-204 B
Revised December 20[illegible]

RECEIVED

United States of America

U. S. DEPARTMENT OF LABOR, BUREAU OF EMPLOYEES' COMPENSATION

IN THE MATTER OF THE CLAIM FOR COMPENSATION UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT.

David Neilson *Claimant.*

against

Luckenbach Steamship Co., Inc. *Employer.*

Fireman's Fund Insurance Co. *Carrier.*

Case No. 299-807

NOTICE OF HEARING C1-3690

Inj: 6/13/50

To Mr. David Neilson, 114 West Sonora Avenue, Stockton, California

To Luckenbach Steamship Co., Inc., 100 Bush Street, San Francisco, California

To Fireman's Fund Insurance Company, Attention: Mr. Gaughran, Attorney, 233 Sansome Street, San Francisco, California

To Mr. P. Juvoraki, Pres., Local 34, 22 North Union Street, Stockton, California

To

To

You are hereby notified that upon application made by David Neilson, an interested party in the above-entitled claim, a hearing on such claim is hereby ordered, to be held before Warren H. PILSBURY

Deputy Commissioner 13th Compensation District of the U. S. Department of Labor, Bureau of Employees' Compensation, at CITY HALL in the City of STOCKTON, CALIFORNIA on the XXXX MONDAY, 26th day of NOVEMBER, 19 51, at 10:00 o'clock a. m. of that day.

U. S. 203, Formal claim filed to toll the statute of limitations,

See attached letter postponing hearing

Reporter
Asst Reporter
Calendar
cop
Filed
copies

In testimony whereof, the undersigned, a Deputy Commissioner of the U. S. Department of Labor, Bureau of Employees' Compensation, has hereunto set his hand at San Francisco, California this 9th day of November, 19 51

Warren H. Pilsbury
Deputy Commissioner.
Compensation District.
13th

20-20-4

U. S. DEPARTMENT OF LABOR

BUREAU OF EMPLOYEES' COMPENSATION
LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT
THIRTEENTH COMPENSATION DISTRICT
ROOM 126, 630 SANSOME STREET
SAN FRANCISCO 11, CALIFORNIA

ADDRESS REPLIES TO:
THE DEPUTY COMMISSIONER

November 14, 1951

REFER TO FILE NO.

Mr. David Neilson
114 West Sonoma Avenue
Stockton, California

Luckenbach Steamship Company, Inc.
100 Bush Street
San Francisco, California

Fireman's Fund Insurance Company
Attention: Mr. Gaughran, Attorney
233 Sansome Street
San Francisco, California

Mr. F. Jaworski, Pres.
Local 54
22 North Union Street
Stockton, California

Re: David Neilson, 259-867
Luckenbach Steamship Co.
Inj: 6/13/50

Gentlemen:

Please be advised that the hearing now set for Monday, November 26, 1951 at 10:00 a.m. at the City Hall, Stockton, California, has been postponed indefinitely. Parties need not appear.

Yours very truly,

Warren H. Pillsbury

Warren H. Pillsbury
Deputy Commissioner
13th Compensation District

WHP:eap

Form US-215A
U. S. DEPARTMENT OF LABOR
BUREAU OF EMPLOYEES' COMPENSATION

Office of Deputy Commissioner Warren H. Pillsbury
Administering Longshoremen's and Harbor Workers' Compensation Act

LEAVE THIS SPACE BLANK

CASE NO. 259-867

INSURANCE CARRIER'S NO.

NOTICE TO EMPLOYER AND INSURANCE CARRIER THAT CLAIM HAS BEEN FILED

November 8, 1951

Gentlemen:

There is enclosed copy of a claim for compensation which has been filed by David Neilsen

You should proceed to pay compensation promptly when due as provided by Section 14 of the Longshoremen's and Harbor Workers' Compensation Act and to furnish medical treatment in accordance with Section 7(a) thereof, unless liability to pay compensation is controverted.

Section 14(d) provides that if the employer controverts the right to compensation he shall file with the deputy commissioner, on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted.

Under the Bureau's regulations where claim is filed the employer or insurance carrier, within 10 days from the date notice is received that claim has been filed, is required to file answer thereto.

[redacted] is Answer enclosed for use in the event the right to compensation is controverted and the claim is to be opposed.

The original notice and answer should be filed with the deputy commissioner at the above address and copy thereof served upon the claimant either personally or by mailing it to the address given in the claim if you deny liability, otherwise you should proceed to pay compensation immediately as provided by the said Act and not require the claimant, as well as yourself, needlessly to incur the expenses incidental to a hearing before the deputy commissioner.

Very truly yours,

Warren H. Pillsbury

Warren H. Pillsbury Deputy Commissioner.

U. S. GOVERNMENT PRINTING OFFICE 16-87420-6

bbo

Address Inquiries and Reports to
U. S. Department of Labor
BUREAU OF EMPLOYEES' COMPENSATION
Warren H. Pillsbury, Deputy Commissioner
Room 128 — [illegible] Sixteenth Street
San Francisco 11, California

Form US-905

Form Approved
Budget Bureau No. 79-R013.1.

U. S. DEPARTMENT OF LABOR
BUREAU OF EMPLOYEES' COMPENSATION

Office of Deputy Commissioner .....

Administering Longshoremen's and Harbor Workers' Compensation Act

LEAVE THIS SPACE BLANK

CASE NO. 279-867

INSURANCE CARRIER'S NO. .....

EMPLOYEE'S CLAIM FOR COMPENSATION

(To be filed with the Deputy Commissioner in accordance with sections 13 and 19 of the law)

INJURED PERSON

1. Name of employee David Nelson Employee's check No. .....
2. Address: Street and No. 114 West Sonora Ave. City or town Stockton, California
3. Sex M Age ..... Married, single, widowed .....
4. Do you speak English? ..... Nationality .....
5. State regular occupation Surveying - Surveyer
6. What were you doing when injured? regular work
7. (a) Wages or average earnings per day, $ No. $30.00 (Include overtime, board, rent, and other allowances.) (b) Per week, $ ..... (c) Were you employed elsewhere during week in which you were injured? ..... (d) If so, state where and when .....
8. Were you paid full wages for day of accident? Yes

EMPLOYER

9. Employer .....
10. Office address: Street and No. Isbrandtsen Steamship Co., Inc. City or town .....
11. Nature of business 100 Bush St. San Francisco, Calif.
Steamship Transportation

THE INJURY

12. Place where injury occurred On board SS EDGAR F. ALLEN
13. Name of foreman C. Perez, Engine Dept.
14. Date of accident or first illness, the 13 day of June, 195 0 at ..... o'clock ..... M.
15. How did accident happen or how was occupational disease caused? Slipped and fell on deck load

NATURE AND EXTENT OF INJURY

16. State fully nature of injury or occupational disease: Fracture, right wrist
17. On what date did you stop work because of injury? ..... 195..
18. Have you returned to work? (Yes or No) No If "yes," on what date? June 13 195 0
19. Does injury keep you from work? (Yes or No) Yes various
20. Have you done any work in period of disability? regular work, yes
21. Have you received any wages since injury? No If so, from and to what date? ..... Yes various
22. Has injury resulted in amputation? ..... If so, describe same .....
No
23. Did you request your employer to provide medical attendance? ..... Has he done so? .....
24. Attending physician: Name ..... Yes Address ..... Yes
25. Hospital: Name Gilbert M. Barrett, M.D. San Francisco, Calif.
St. Luke's San Francisco, Calif.

NOTICE

26. Have you given your employer notice of injury? (Yes or No) ..... When? ..... 195..
27. If such notice was given, to whom? ..... Yes Immediately
28. Was it given orally or in writing? .....

I hereby present my claim to the Deputy Commissioner for compensation for disability resulting from an injury arising out of and in the course of my employment and not occasioned solely by intoxication, or by my willful intention, and in support of it I make the foregoing statement of facts.

Signed by David Nelson
Claimant.

Dated Oct 25 195.. Mail address .....

U. S. GOVERNMENT PRINTING OFFICE 114 West Sonora Ave., Stockton, Calif.

APPENDIX B-8

U. S. DEPARTMENT OF LABOR

BUREAU OF EMPLOYEES' COMPENSATION
LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT
THIRTEENTH COMPENSATION DISTRICT
ROOM 130, 630 SANSOME STREET
SAN FRANCISCO 11, CALIFORNIA

ADDRESS REPLIES TO:
THE DEPUTY COMMISSIONER

REFER TO FILE NO.

October 24, 1951

Mr. Jimmy O. James
225 Santa Barbara
Los Angeles, California

Fireman's Fund Insurance Co.
233 Sansome St.
San Francisco, California

Arrow Stevedore Company
Berth 179
Wilmington, California

Mr. Murray H. Roberts, Atty.
Citizens Bank Bldg.
Wilmington, California

Re: Jimmy O. James, 2201-171
Arrow Stevedore Co.
Inj: 11-6-50

Gentlemen:

The report of my impartial medical examiner, Dr. George W. Jones, of October 1, 1951, was received about that time and copies given all parties. The case is now ready for informal permanent disability estimate. I adopt Dr. Jones' estimate of loss of 20 percent of the use of the right index finger. This entitles Mr. James to compensation at $35.00 a week for 5.6 weeks amounting to $196.00 all of which has accrued.

As Mr. James did not lose over seven days time from work at the time of his injury he will be in danger of his right to this compensation being outlawed unless it is paid or the claim filed within one year from the date of the injury or by November 6 of this year. To be safe, Mr. James should execute and forward to this office his claim for compensation by November 1, if payment is not received by them. The forms are enclosed, as the time is short.

Yours very truly,

Warren H. Pillsbury
Deputy Commissioner
19th Compensation District

WHP:kd

Enclosed Forms U.S.-203

Appendix C

In the Matter of the Claim for Compensation Under the Longshoremen's and Harbor Workers' Compensation Act

LOUIS SHALLAT,

Claimant,

against

MATSON TERMINALS, INC.,

Employer,

FIREMAN'S FUND INSURANCE COMPANY,

Insurance Carrier.

COMPENSATION ORDER—AWARD OF COMPENSATION

Such investigation in respect to the above-entitled claim having been made as is considered necessary, and a hearing having been duly held in conformity with law, the Deputy Commissioner makes the following:

Findings of Fact

That on the 21st day of November, 1947, the claimant above-named was in the employ of the employer above named at San Francisco Harbor, in the State of California, in the 13th Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, and that the liability of the employer for compensation under said Act was insured by Fireman's Fund

Insurance Company; that on said day claimant herein while performing service for the employer as a longshoreman and engaged in stevedoring operations on a vessel upon navigable waters of the United States at said harbor sustained personal injury arising out of and in the course of his employment and resulting in disability as follows: He caught his left hand between a sling and a bight, causing a contusion of the left hand and exacerbation of a pre-existing progressive arthritis of the proximal joint of the second or middle finger; that the employer furnished claimant with medical treatment, etc., in accordance with Section 7(a) of the said Act; that the average weekly earnings of the claimant herein at the time of his injury amounted to the sum of $90.00; that claimant did not sustain at said time any sufficient injury to the right hand to be a cause of any disability therein; that no compensation has been paid; that the claim for compensation was filed on May 23rd, 1949, the employer's first report was filed in the office of the Deputy Commissioner on February 16th, 1948, that by reason of the absence of any temporary disability claimant did not become entitled to any compensation payments for which he could make claim until the condition of his left second finger reached a permanent stage and became a permanent disability, that said permanent disability became fixed within one year prior to the filing of the claim and the claim is not barred by limitations; that by reason of his injury claimant has sustained permanent disability amounting to loss of 50% of the use

of his finger end entitling him to compensation for 9 weeks at $25.00 a week, amounting to $225.00, no part of which has been paid; that claimant's physician, Dr. V. C. Stehr, has rendered service to claimant in the prosecution of his claim consisting in examination and filing of a report for use as evidence herein, that a fee is charged and approved therefor in the sum of $25.00, and lien granted therefore upon compensation herein awarded claimant.

Upon the foregoing facts the Deputy Commissioner makes the following:

Award

That the employer, Matson Terminals, Inc., and the insurance carrier, Fireman's Fund Insurance Company, shall pay to the claimant compensation as follows:

To claimant the sum of $225.00 forthwith, less however the sum of $25.00 to be deducted therefrom and paid to claimant's physician, Dr. V. C. Stehr, upon his lien for fee for examination and report.

Given under my hand at San Francisco, California, this 28th day of July, 1949.

WARREN H. PILLSBURY,
Deputy Commissioner,
13th Compensation District.